No. 20-7397

IN THE
SUPREME COURT OF THE UNITED STATES



WILLIAM RANDOLPH KING– PETITIONER

VS.

O'BELL T. WINN–RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE MICHIGAN COURT OF APPEALS

# PETITION FOR WRIT OF CERTIORARI

WILLIAM RANDOLPH KING #118612
PETITIONER IN *PRO SE*
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## QUESTIONS PRESENTED FOR REVIEW

I. Could reasonable jurists debate whether the prosecution committed a *Brady* violation when it failed to disclose the prior victim's pubic hair found during DNA testing in a timely manner that would allow the defense to capitalize on its use?

II. Could reasonable jurists debate whether the trial court erred when it failed to instruct the jury that it should presume that the DNA testing on the pubic hair would have been unfavorable to the prosecution?

III. Could reasonable jurists differ with the district court's assessment that Petitioner's sentence violated the Eighth Amendment?

LIST OF PARTIES IN COURT BELOW

The caption set out above contains the names of all the parties.

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## OPINIONS BELOW

The order of the federal court of appeals for the Sixth Circuit denying Petitioner's motion for a certificate of appealability was not reported, but is set forth at Appendix A

The judgment of the United States District Court for the Eastern District of Michigan denying Petitioner's petition for a writ of habeas corpus was not reported, but is set forth in Appendix B

## JURISDICTION

The order for the federal court of appeals for the Sixth Circuit was entered on September 9, 2020. Rehearing was not sought in that court. Therefore, the jurisdiction of this Court is invoked under 28 USC §1254(1)

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution, provides

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

2. The Fourteenth Amendment, United States Constitution, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The statutes under which Petitioner appealed were 28 U.S.C. § 2253(c), which provides:

> Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or;
>
> (B) the final order in a proceeding under section 2255;

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2);

and

4. 28 U.S.C. §1291, which provides:

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of district courts of the United States, the United States District Court of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this Title [28 U.S.C. §§1292(c) and (d) and 1295]

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## STATEMENT OF THE CASE

In September 2016, a jury in the Wayne County Circuit Court convicted Petitioner of first-degree criminal sexual conduct, Mich Comp Laws §750.520b(1)(c), kidnapping, Mich Comp Laws §750.349, and third-degree criminal sexual conduct, Mich Comp Laws, §750.520(1)(b). The state trial court sentenced him as a fourth-time habitual felony offender to 40 to 70 years in prison for the first-degree criminal sexual conduct conviction and to lesser concurrent terms for the other convictions.

The charges against Petitioner arose from a cold-case sexual assault investigation that took place in 2005. Then, the complainant, Erin Long, flagged down police officers in August of that year, telling them that she had just escaped from a van after being raped. The police took Long to a local hospital, where she was treated and samples were taken for a rape kit. The rape kit was sent to the Detroit Police Department (DPD), where it sat untested for almost ten years.

In 2015, the Michigan State Police (MSP) agreed to assist the DPD with its large backlog of untested rape kits. The MSP sent Long's kit to a private firm, Bode Testing Group, for testing, and Bode returned

the profile to the MSP, who then ran the profile through the Federal Bureau of Investigation's CODIS DNA database. The sample matched Petitioner's CODIS profile.

Police then obtained a known DNA sample from Petitioner, which also matched the sperm sample from Long's kit.

Around the same time, a second lab technician investigating a different DPD case identified Petitioner as a match to a DNA sample taken from another complainant, Nichole McClintock.

McClintock reported being raped by two men in Detroit on August 16, 2014.

A foreign pubic hair was also found during McClintock's rape examination. That hair, however, was not tested at the time, because, unlike the sample that matched Petitioner, it required more specialized mitochondrial DNA testing.

The Wayne County Prosecutor's Office charged Petitioner with six counts of criminal sexual conduct and kidnapping with respect to Long's allegations. But that Office decided not to charge Petitioner with assaulting McClintock. Instead, that Office added as a MRE 404(b) other-acts witness to Long's case.

In both cases, the Wayne County Prosecutor's theory was that the Petitioner demonstrated a common scheme or plan by targeting vulnerable young women found in public places who were drug abusers. The defense's theory, however, was that both Long and McClintock were prostitutes with whom Petitioner had had consensual sex.

Prior to trial, the prosecution disclosed to the defense the existence of the foreign pubic hair that was found in McClintock's rape kite. Petitioner's counsel then asked the trial court to order a lab to conduct a forensic evaluation of the hair on the basis that the results of the test may uncover exculpatory evidence.

It was the defense's belief that the foreign hair, once tested, would support its theory that Long and McClintock were sex workers who had been having consensual sex with Petitioner, as well as with other people. In fact, Petitioner claimed that he had paid Long for consensual sex and that he and his son had had consensual sex with McClintock.

From the outset, the prosecution claimed that it believed the pubic hair had already been submitted for testing, but because the MSP did not have the capability to conduct the test itself, the hair had to be sent to the FBI.

The prosecution further claimed that it did not know how long it would take for the FBI to conduct the test, arguing that, in any event, the test results would not be exculpatory because McClintock had reported being raped by two men and a pubic hair from a second man would not exonerate Petitioner.

Believing itself that the hair evidence would not be relevant, the trial court, nonetheless, entered an order requiring the hair be tested.

On the first morning of trial, the prosecution provided to defense a report from the MSP that the pubic hair had still not been tested.

The defense then moved to exclude McClintock's other-acts testimony due to the failure to test the hair as the court had previously ordered. But when the prosecution mentioned to the state trial court how the hair had been sent out and the testing had not yet been completed, the court denied the defense's motion to exclude McClintock's testimony, indicating its intention to proceed with trial that day.

The following morning, defense counsel requested a jury instruction directing the jury to presume that the testing of the hair would have been unfavorable to the prosecution, but the trial court

denied the request.

At Petitioner's trial, Long testified that Petitioner had forcibly sexually assaulted her multiple times after she accepted a ride in his van. Long explained that she had only agreed to the ride because there was another woman inside the van, but Petitioner later dropped the woman off at a store and drove to a secluded spot at a gas station where the alleged assault took place. Then, according to Long, Petitioner picked up several other men and drove to an industrial area of Detroit where Petitioner and the men stole copper piping from a building.

Long testified that Petitioner then sexually assaulted her a second time in a residential neighborhood while the other men unloaded the stolen materials. When Petitioner supposedly suggested that all of the other men would be given a turn with Long. Long said she ran from the van, where she later flagged down the police officers.

Petitioner testified in his own defense, where he said that he frequently did business with prostitutes, whom he would compensate with money and drugs in exchange for sex. He admitted to having had sex with Long and McClintock, to which he said that the sex was consensual in both cases.

The jury found Petitioner guilty of two counts of criminal sexual conduct and kidnapping.

Prior to sentencing, the prosecutor received the results of the DNA analysis that had been performed on the foreign pubic hair found during McClintock's rape examination. Those results showed that the hair belonged to a man named Rondal Lydiel Topps, who did not have any connection to Long's trial or Petitioner's conviction.

At the sentencing hearing, the prosecutor gave Petitioner's counsel a copy of the test results showing that the hair belonged to Topps. Petitioner's counsel was outraged and indicated that he would move for a new trial based that new evidence, but counsel never filed the motion.

On appeal, Petitioner raised the following three claims in his brief:

> Mr. King was denied due process when potentially exculpatory evidence, which supported his theory of the case, was not produced before or during trial.
>
> Mr. King was entitled to have a jury given a negative inference instruction regarding the material the government had in its possession for years, but failed to test.
>
> Defendant-Appellant is entitled to be resentenced as

> his current sentence is contrary to Const 1963, art 1, § 16, and his guidelines were incorrectly scored.

The Michigan Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. See *People v King*, 2018 WL 1972792 (Mich. Ct. App. Apr. 26, 2018).

Petitioner subsequently filed an application for leave to appeal in the Michigan Supreme Court raising the same claims that he raised in the Michigan Court of Appeals, and the Michigan Supreme Court denied the application in a standard form order. See *People v. King*, 919 NW2d 58 (Mich 2018).

Petitioner filed a federal petition for a writ of habeas corpus, raising three claims: (I) the prosecution withheld exculpatory evidence from the defense when it failed to timely submit a pubic hair for DNA testing; (II) the trial court erred when it failed to instruct the jury to presume the test results on the pubic hair would have been unfavorable to the prosecution, and (III) the trial court incorrectly scored the sentencing guidelines and sentenced him in violation of the Eighth Amendment.

The district court entered a final, appealable judgment in this matter on April 22, 2020, that denied Petitioner relief on his petition.

(See App "B")

In that judgment, the district court denied Petitioner a certificate of appealability, but decided to grant him permission to appeal *in forma pauperis*.

On or about April 18, 2020, Petitioner filed his notice of appeal. Petitioner never received the order from the district court denying his notice of appeal. But he did receive confirmation from the Sixth Circuit clerk of receipt of his filing and recommendation to file a motion for a certificate of appealability, with which Petitioner complied. On September 9, 2020, the Sixth Circuit clerk, however, entered an order denying Petitioner's motion. (App "A," 6).

## REASONS FOR GRANTING THE WRIT

Petitioner exhausted three claims through the Michigan courts, alleging a *Brady* violation, an adverse-inference instructional error, and an Eighth Amendment sentence violation. The Michigan Court of Appeals adjudicated the claims and affirmed. Both the federal district court and the Sixth Circuit court of appeals ruled that Petitioner's claims were contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of

the facts. Petitioner, however, disagreed and maintained that the opposite is true. He urges this Court to grant summary reversal ("GVR"). See S Ct R 10(a)( The Court may "summary reverse" if lower court federal court decisions "ha[ve] so far departed from the accepted and unusual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of [the Supreme] Court's supervisory power."; S Ct R 16.1("order [disposing of the certiorari petition] may be a summary disposition on the merits"); *Maryland v Dyson*, 527 US 465, 465 n 1 (1999)(per curiam)("summary reversal does not decide any new or unanswered question of law, but simply corrects a lower court's demonstrably erroneous application of federal law").

## ARGUMENTS

### I. Could reasonable jurists debate whether the prosecution committed a *Brady* violation when it failed to disclose the prior victim's pubic hair found during DNA testing in a timely manner that would allow the defense to capitalize on its use?

Petitioner maintains that the answer to this question is "yes."

In his habeas petition, Petitioner alleged, as he did throughout the state courts, that the prosecution violated his due process rights under the Supreme Court's decision in *Brady v Maryland*, 373 U.S. 83 (1963), when it withheld exculpatory evidence by failing to timely submit the pubic hair found during McClintock's rape kit for DNA testing.

McClintock's testimony was admitted as other-acts evidence, serving as an essential pillar of the prosecution's case. As noted above, the result of the testing had not been completed at the time of trial, and when completed, the pubic hair was found not to be from Petitioner. Petitioner contended that if the testing had been completed before trial, he could have better questioned the prior victim at trial and utilized the identified person from whom the hair came as a witness. Because the Michigan Court of Appeals did not find a *Brady* violation, Petitioner sought federal habeas relief.

The district court, faced with Petitioner's compelling argument in support of his claim, concluded, in pertinent part, that:

> The Michigan Court of Appeals' decision was not contrary to, or an unreasonable application of, clearly established federal law. It was not unreasonable for the state appellate court to conclude that the prosecutor did not violate Brady because the only evidence that the prosecutor had at the time of trial—that a foreign hair was recovered from McClintock's rape kit—was disclosed to the defense. Evidence that the hair belonged to Topps was not suppressed because that evidence did not exist at the time of trial. And when the test results on the hair came back and revealed that the hair belonged to Topps, that evidence was also disclosed to the defense. Moreover, King has not cited any clearly established Supreme Court law that under these circumstances, a prosecutor had a duty to test the hair at issue any

> sooner than the prosecution did. Finally, King has not shown that the Michigan Court of Appeals' unreasonably concluded that the prosecution did not act in bad faith. Indeed, King's own counsel stated on the record that the prosecution did not act in bad faith with respect to the testing of the hair.

Dist Ct. Op, pp. 11-12.

Then, the Sixth Circuit, on appeal denied Petitioner relief by concluding:

> King does not dispute that the prosecution did not have the DNA test results in its possession before trial. He therefore cannot satisfy the first *Brady* prong: the prosecution could not have suppressed evidence that it did not have in its possession. Similarly . . . King's counsel conceded that the prosecution did not act in bad faith when it delayed testing the pubic hair found on McClintock. And King cannot show that the evidence was material or would have been favorable to his defense insofar as his DNA was also collected from McClintock's vagina: the presence of another individual's pubic hair on McClintock would have little or no bearing on his guilt with respect to his sexual assault upon the victim in his case. On this record, no reasonable jurist could debate the district court's conclusion that the Michigan Court of Appeals' adjudication of King's *Brady* claim was not contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts.

(App " ," 3-4).

Reasonable jurists, contrary to the findings of the Sixth Circuit, however, could debate whether the district court's assessment of

Petitioner's claim was debatable or wrong, in light of *Murphy* and *Slack*. Indeed, this Court has found a prosecution's suppression of a negative DNA test result violates *Brady*. See *Sawyer v Hofbauer*, 299 F3d 606 (6th Cir. 2002)(negative DNA test result was material to petitioner's guilt or innocence and it was reasonably probable that disclosure ), and when the prosecution failed to disclose Brady evidence in a timely manner). *United States v Garner*, 507 F3d 399 6th Cir. 2007)(the prosecution's failure to disclose cell phone records in a timely manner that would permit the defense to utilize the evidence did result in a *Brady* violation).

Petitioner is cognizant that a belated disclosure of evidence violates *Brady* only where a petitioner can show that the delay itself caused prejudice. *O'Hara v Brigano*, 499 F3d, 502 (6th Cir. 2007). He met that standard when he showed how he needed the suppressed evidence to impeach McClintock's testimony and to undermine the prosecution's theory of the case. Moreover, prejudiced is established by the fact that Petitioner could have utilized the identified person from whom the hair came as a witness, had he received the testing results in time.

Contrary to the lower courts' conclusion, the delay and its prejudicial effect upon Petitioner, is attributable to the prosecution. The state court record establishes that any blame for the failure to subject the pubic hair to testing in a timely manner fell to the MSP, who sat on the untested evidence for nearly a decade, as the prosecution explained to the state trial court. If so, then the prosecution must bear the responsibility for the MSP's misconduct. *Kyles v Whitley*, 514 US 419, 429 (1995)(misconduct of the police is charged to the prosecution). In addition to that, both Michigan Court of Appeals and the district court erred when it premised the validity of Petitioner's claim on whether or not he could prove the prosecution acted in bad faith. However, *Brady's* landmark decision stands for the proposition that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87.

## II. Could reasonable jurists debate whether the trial court erred when it failed to instruct the jury that it should presume that the DNA testing on the pubic hair would have been unfavorable to the prosecution?

Petitioner alleged in his habeas petition, as he did throughout the

state courts, that, because the prosecution failed to test and provide the results of all of the DNA evidence from the McClintock's rape kit, the state trial court erred when it failed to provide a negative inference jury instruction. The Michigan Court of Appeals rejected the claim on the basis that the trial court did not hold that the prosecution acted in bad faith when it did not produce the testing results by the time of trial. Petitioner sought federal habeas relief based on the Michigan Court of Appeals' unreasonable adjudication. The district court, however, determined that there was no error in the state court's refusal to find bad faith on the part of the prosecution. The Sixth Circuit agreed, and determined that:

> King's counsel admitted that the prosecution did not act in bad faith when it did not produce before trial the DNA results from the pubic hair that was collected from McClintock. And King has not shown that omitting an adverse inference instruction with respect to this unproduced evidence "so infected the entire trial that the resulting conviction violates due process." *Estelle v McGuire*, 502 U.S. 62, 72 (1991)(quoting *Cupp v Naughten*, 414 U.S. 141, 147 (1973)). No reasonable jurist therefore could debate the district court's conclusion that the Michigan Court of Appeals' rejection of this claim was not contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts.

(App " ," 4).

Reasonable jurists, however, could differ with the lower courts' assessment. For instance, this Court found that a state court's failure to give an instruction based on the court's erroneous factual finding warranted habeas relief. See e.g., *Barker v. Yukins*, 199 F.3d 867 (6th Cir. 1999)(The failure to instruct on defendant's right to use deadly force to resist a rape deprived defendant of a meaningful opportunity to present a defense where the general self-defense instruction gave the jury the ability to enter a guilty verdict while believing that defendant had been resisting a rape, but that it was questionable whether the rape would have led to death or serious injury).

## III. Could reasonable jurists differ with the district court's assessment that Petitioner's sentence violated the Eighth Amendment?

Petitioner maintains that the answer to this question is "yes."

Petitioner alleged in his habeas petition, as he did throughout the state courts, that his sentence is cruel and unusual because the term exceeds his natural life expectancy, and thus, the sentence equates to a life sentence without parole, and the trial court failed to consider mitigating factors. Both the district court and the Sixth Circuit

concluded that the claim does not merit relief. Contrary to that conclusion, however, reasonable jurists could disagree with that assessment as wrong or debatable.

For instance, one of the mitigating factors that the state trial court failed to consider was Petitioner's mental health history. The presentence investigation report documented his diagnosis of bipolar disorder and "other mental health problems." Meanwhile, the Sixth Circuit itself had held that mitigating evidence may include evidence that a defendant potentially suffered from a mental defect. *Haliym v Mitchell*, 492 F3d 680, 712 (6th Cir. 2007).

Furthermore, Petitioner's psychiatric history implicated Eighth amendment principles of lesser culpability similar to those suffering with intellectual disabilities, as is articulated in *Atkins v Virginia*, 536 U.S. 304 (2002), *Roper v Simmons*, 543 U.S. 551 (2005)(invalidating death penalty for defendants who committed their crimes before the age of 18), and *Kennedy v Louisiana*, 554 U.S. 407 (2008)(while death penalty may be appropriate for murder, it is constitutionally inappropriate for the rape of a child), *Graham v Florida*, 560 U.S. 48 (2010)(invalidating the sentence of life without parole for juvenile who

committed attempted robbery and a serous assault), that undermines the trial court's previous determinations regarding his culpability and competency.

For example, in *Atkins*, the United States Supreme Court declared that the execution of mentally retarded defendants, those people with intellectual disabilities, is unconstitutional. The Court explained that the reason the Eighth Amendment is violated with the use of the death penalty on those convicted defendants is that defendants with intellectual disabilities must be viewed as less culpable than other defendants.

> Mentally retarded persons frequently know that difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning to control impulses, and to understand the reactions of others. There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.

The United States Supreme Court's reasoning in *Atkins* for justifying this conclusion proceeded through four steps. First, the Court identified the normative punitory principle – what it referred to as a "precept of justice" – "that punishment for crime should be graduated and proportioned to [the] offense." *Id* at 311 (quoting *Weems v United States*, 217 U.S. 349, 367 (1910)). Second, the Court specified that the graduation of proportionality requirements mean that "criminal culpability must be limited to [the defendant's] participation in [the crime], and [the defendant's] punishment must be tailored to his personal responsibility and moral guilt." *Id*, at 312-313 (quoting *Enmund v Florida*, 458 U.S. 782, 801 (1982)). Third, the Court noted that while mentally retarded individuals' deficiencies "do not warrant an exemption from criminal sanctions . . . they do diminish their personal culpability." *Id*, at 318. Fourth, the Court recognized that if the retributive purpose of punishment *Atkins* faced was to be effectuated, the severity of the punishment levied against him must necessarily depend on his culpability. *Id*, at 319. In order to ensure that the punishment in *Atkins* was constitutionally proportioned to the defendant's personal culpability, the Court announced that the State of

Virginia could not execute Atkins, whose diminished moral culpability was established by the evidence of his mental retardation. *Id*, at 319-320.

Petitioner, in his petition, was alleging that an *Atkins* type of protection extend to his sentencing procedure. In the past, the United States Supreme Court has frequently referenced a defendant's culpability in Eighth Amendment cases. See e.g., *Cooper Indus v Leatherman Tool Group*, 532 U.S. 424, 435 (2001)(recognizing culpability as important criteria for Eighth Amendment excessive fines claims); *Harmelin v Michigan*, 501 U.S. 957, 1022 (1991)(White, J., dissenting)("[I]n evaluating the gravity of the offense, it is appropriate to consider the harm caused or threatened to the victim or society . . . and the culpability of the offender, including the degree of requisite intent and the offender's motive . . . "); *Penry v Lynaugh*, 492 U.S. 302, 319 (1989)("punishment should be directly related to the personal culpability of the criminal defendant"), overruled on other grds by *Atkins*, 536 U.S. at 304; *Enmund* 458 U.S. at 801(defendant's "punishment must be tailored to his personal responsibility and moral guilt"); *Ramirez v Castro*, 365 F 3d 755 (CA 9 2004)("[T]he [Supreme]

Court [in *Solem v Helm*, 463 U.S. 277 (1983)] further endorsed consideration of other accepted principles that courts may apply in measuring the harm caused or threatened to the victim or society, such as . . . the offender's culpability"). Similarly, like the mentally retarded individual described in *Atkins*, Petitioner's "deficiencies do not warrant an exemption from criminal sanctions, but they do diminish [his] personal culpability." *Id.*

Although courts generally have interpreted *Atkins* to apply only to capital sentences, "[t]his does not mean that a defendant's culpability is irrelevant in non-capital cases." *United States v Moore*, 643 F 3d 451, 456 (CA 6 2004)(relying on *Solem* and *Graham*). That is because Eighth amendment principles regarding lesser culpability have been equally applied to capital and non-capital cases. In fact, *Graham* involved a term of imprisonment of life without parole for an attempted robbery and a serious assault. The United States Supreme Court had declared that term of imprisonment for a juvenile cruel and unusual, and therefore unconstitutional. For that reason, several federal court decisions have extended *Atkins's* doctrine to non-capital crimes. See e.g., *United States v Larson*, 558 F Sup 2d 1103 (D. Mon 2008)(five-year

minimum held unconstitutional under the Eighth Amendment, as applied to mentally retarded 21 year old); *United States v Strayer*, No. 8-CR-482, 2010 U.S. Dist LEXIS 62719, 2010 WL 2560466 (D. Neb, June 24, 2010)(granting below guidelines sentence for a 25 year old whose psychological evaluation concluded that he was emotionally close to an adolescent and also had other mental health problems). Petitioner just believed that *Atkins'* doctrine should have extended to his case as well, and warranted a consideration the list of mitigating factors that warranted a more reasonable sentence, one that affords him an opportunity to become eligible for parole during his lifetime. He prays that this Court agrees.

## CONCLUSION

Because the claims contained in his federal habeas petition are not only debatable, but also implicate his constitutional rights, Petitioner, WILLIAM RANDOLPH KING, asks that this Court to reverse the Sixth Circuit's denial of his motion for certificate of appealability and to grant this petition for certiorari as to all of his appellate issues because he, just like the petitioner in *Miller-El*, has proven "'something more than the absence of frivolity,' or 'the existence of mere good faith on his or her part.'"

Dated:

Respectfully submitted,

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