NO. _____

In the

Supreme Court of the United States

_____

MELVIN KNIGHT
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

_____

On Petition for Writ of Certiorari
to the Supreme Court of Pennsylvania

_____

PETITION FOR WRIT OF CERTIORARI

_____

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CAPITAL CASE

QUESTION PRESENTED

Whether a State may require a defendant to present an IQ score of 75 or below that was "documented prior to age 18" to have his intellectual disability claim considered as a basis to disqualify him from the death penalty, when this requirement is contrary to clinical standards for diagnosis and contrary to multiple decisions where this Court has granted relief to petitioners who lacked any such documentation?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. The parties are Melvin Knight, Petitioner, and the Commonwealth of Pennsylvania, Respondent.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Melvin Knight respectfully prays that this Court issue a writ of certiorari to review the judgment below.

OPINION BELOW

The November 18, 2020 opinion of the Supreme Court of Pennsylvania appears at Appendix A. It is published as *Commonwealth v. Knight*, 241 A.3d 620 (Pa. 2020).

JURISDICTION

Mr. Knight is seeking review from the courts of the Commonwealth of Pennsylvania. The judgment of the Supreme Court of Pennsylvania was entered on November 18, 2020. A copy of that opinion is attached as Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution, as applied to the States via the Fourteenth Amendment, reads as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

The Westmoreland County District Attorney, representing the Commonwealth of Pennsylvania, charged six persons including Melvin Knight with murder and other crimes related to the death of Jennifer Daugherty on February 11, 2010, in Greensburg, Pennsylvania. On June 7, 2010, the Commonwealth filed a notice of aggravating circumstances in Mr. Knight's case that would make him eligible for the death penalty.

On April 12, 2012, without any plea agreement, Mr. Knight pled guilty to first-degree murder and conspiracy, carrying a minimum sentence of life without the possibility of parole. See 18 Pa. C.S.A. §1102(a)(1); 61 Pa. C.S.A. 6137(a)(1). However, the Commonwealth continued to seek the death penalty against Knight and a capital sentencing trial commenced in front of a jury on August 13, 2012. The jury returned a verdict of death. On appeal, the Pennsylvania Supreme Court reversed the death sentence because the jury had failed to recognize Mr. Knight's lack of significant history of prior criminal convictions as a statutory mitigating factor. See *Commonwealth v. Knight*, 156 A.3d 239 (Pa. 2016).

A second capital sentencing trial began on October 29, 2018. At this trial Knight, represented by different counsel than in the first proceeding, was again sentenced to death. After litigating timely post-trial motions, Knight appealed his death sentence to the Pennsylvania Supreme Court, raising amongst other issues the trial court's refusal to instruct the jury on his claim of intellectual disability. The Pennsylvania Supreme Court affirmed in an opinion issued on November 18, 2020.

This timely Petition for Writ of Certiorari follows.

II. FACTUAL HISTORY

A. Knight was one of six persons responsible for a murder, to which he confessed and pled guilty

In February 2010, Ricky Smyrnes invited the victim, Jennifer Daugherty, Melvin Knight, and five other persons to stay with him at his apartment in Greensburg, PA, for several days. During their stay, Smyrnes led his guests in an escalating course of assaults and abuse against Daugherty, culminating in her murder on the night of February 10.

Knight was a 20-year-old African American man from Pittsburgh who had no significant criminal history.[1] *Commonwealth v. Knight*, 241 A.3d 620, 626 (Pa. 2020) ("it was undisputed that Appellant had no prior felony or misdemeanor convictions"). On February 8, 2010, Knight and his girlfriend, Amber Meidinger, who was pregnant with his child, were homeless and found themselves at a bus station in Greensburg. *Id.* at 624; TT 657.[2] While there, Knight recognized Smyrnes, whom he had met in jail.[3] TT 661. Smyrnes was accompanied by the victim. *Knight*, 241 A.3d at 624. Meidinger recognized the victim from a facility they both attended that provided services to persons with mental disorders and disabilities. *Id*. at 624. Smynres suggested that Knight and the others to stay at his apartment and they agreed. *Id*. Codefendants Angela Marinucci, Robert Masters, and Peggy Miller joined Knight, Meidinger, and Daugherty in staying at Smyrnes' apartment. *Id*.

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[1] The victim and the five co-defendants were all white. Greensburg is a small city about 30 miles southeast of Pittsburgh. In 2010, the city's population was just under 15,000 and only about 4.4% of residents were Black.
https://www.census.gov/quickfacts/fact/table/greensburgcitypennsylvania/

[2] "TT" refers to the consecutively paginated transcript of Knight's second sentencing trial, which took place from November 5 through November 15 of 2018.

[3] Although the reason and duration of the stay was not explained to the jury, the record indicates Knight was in jail for about 18 days shortly before the incident because he had failed to appear for a summons. TT 931, 1198.

The victim told others that she wanted to marry Smyrnes, which led to conflict with Smyrnes and Marinucci, who was dating Smyrnes. *Id*. Over the next two days, all of the persons present at Smyrnes' apartment began an escalating course of abuse against the victim, including stealing from her, assaulting her, shaving her head, and forcing her to drink concoctions containing urine, feces, detergent, and medication. *Id*. at 624-625. In her testimony for the prosecution, Meidinger also alleged that Knight raped the victim. TT 543. However Meidinger's claim was not supported by any other evidence and the jury rejected it as an aggravating circumstance. TT 1200-01.

Smyrnes convened "family meetings" throughout this abuse. *Knight*, 241 A.3d at 625. At the third meeting, all of the guests voted to kill the victim. *Id*. Daugherty wrote a suicide note at Smyrnes' insistence so the group could avoid blame. *Id*. Smyrnes then handed Knight a knife and told him to stab the victim. *Id*.; TT 663. When Knight hesitated, Smyrnes told him to "stab her" or else he "would get into trouble." TT 663. Knight explained in his confession that he was afraid of Smyrnes because of his "bad temper," and that Smyrnes had earlier caused both of them to be "locked down" when in jail together. TT 661. Knight complied, stabbing the victim several times in the chest, and cutting her throat. *Knight*, 241 A.3d at 625. Smyrnes then slit the victim's wrists and worked with Knight to choke her with Christmas lights until she died. *Id*. After another "family meeting" called by Smyrnes to determine what to do with the victim's body, he and Knight covered her in plastic bags and put her in a garbage can. *Id*. at 626. They then walked the can to the parking lot of a nearby middle school and placed it under a parked truck. *Id*.

The victim's body was found the next morning and the police were quickly able to identify her and connect her to Smyrnes' apartment. *Id*. All six of the perpetrators were arrested that same day. Knight confessed to his involvement in the murder of Jennifer Daugherty that

night, and later pled guilty to first-degree murder. *Id*.; TT 656, 667. At his 2018 capital sentencing trial, almost of all the prosecution's evidence concerned the facts of the offense. Much of the narrative came from Knight's own confession and from Meidinger, who testified for the prosecution in all of their trials and subsequently avoided a capital prosecution.[4]

B. Lay and expert testimony at Knight's capital sentencing trial demonstrated he suffered from adaptive deficits that severely impaired his everyday functioning

In the 2018 sentencing trial, numerous witnesses testified about Knight's extensive history of disability and dysfunction. In addition to arguing this history as a mitigating circumstance, Knight's lawyer sought to have the jury consider whether he was intellectually disabled and thus ineligible for the death penalty.

Knight's mother, Yolanda Rue, testified that he was born after a complicated pregnancy, in which she was diagnosed with preeclampsia, toxemia and gestational diabetes. TT 1039. She separated from Knight's biological father when he was about one and a half and became his only active parent. TT 1040. From a very young age, Knight's development and functioning were impaired. When he first obtained psychiatric testing and treatment at about six years old, he was diagnosed with global development delays and Attention Deficit Hyperactivity Disorder (ADHD) and was prescribed Ritalin. TT 1040. Ms. Rue recalled doctors telling her that, "if the wind changed directions he would be distracted." TT 1040. Knight was found eligible for Social Security Disability Insurance (SSDI), which he would continue to receive for the rest of his life. TT 1056.

[4] Smyrnes was the only other co-defendant who received the death penalty, following his separate capital trial in 2013. Marinucci was 17 years old at the time of the offense and was convicted in a non-capital trial in 2011. The prosecution allowed Meidinger, Robert Masters and Peggy Miller to enter non-capital pleas in 2013.

Ms. Rue recalled that her son was placed in special education courses in elementary school because it was "really all they had to offer." TT 1041. She recalled that in elementary school, other children perceived that her son was different and reacted by either picking on or bullying him. TT 1052. Richard Livingston, Knight's elementary school special education teacher testified that Knight was placed in his class at the end of second grade through the end of fifth grade because he had a learning disability and displayed nonstandard behaviors for his age, such as crying and zoning out. TT 908, 900. In the special education class, Knight learned reading and math alongside other students with learning disabilities, emotional problems, and autism. TT 900, 898. Livingston remembered that his IQ was low and while he could memorize some information, Knight had difficulty with "higher thinking" and could not explain his work or reasoning. TT 900. He was mainstreamed for gym, music, and spelling because he could manage memorization. TT 900. Mr. Livingston recalled that Knight was a very gullible child and was easily manipulated by other students into behaving inappropriately in unstructured settings. TT 898. He wanted to be liked by other students, but he did not have many friends. TT 899. Knight would do "the bidding" of more popular students to ingratiate himself with them. TT 899.

After elementary school, Knight attempted to enter a mainstream public middle school, but Ms. Rue explained that it became quickly apparent that her son could not function in a regular classroom. TT 1043. Knight finished his education in schools with other disabled children. TT 1044.

Throughout the years, Knight was prescribed "a number of medications," including Adderall, Concerta, and Seroquel, in addition to the initial Ritalin. TT 1048-1049. Different diagnoses were considered for him including a conduct disorder, oppositional defiance disorder,

and bi-polar disorder. TT 1049-1050. The efficacy of Knight's medications varied and at times, Ms. Rue had to commit him to a mental health facility for monitoring. TT 1050.

In school, Knight tried to take vo-tech courses with aspirations of becoming an EMT. TT 1047. However, Ms. Rue explained that his limitations would have made it impossible for him to accomplish this. TT 1047. Knight obtained the only job he ever held from a friend of his mother at a neighborhood convenience store, where he worked one summer in high school when he was about 16. TT 1045-1046. There, he could complete simple tasks, such as sweeping and stocking shelves, under the owner's direct supervision. TT 1045.

When Knight turned 16, he started disappearing from the house to hang out with friends. TT 1051. On one occasion, a "friend" convinced him to accompany him to West Virginia to meet a girl. TT 1053. Knight's mother told him not to go, but he went anyways and got stranded there. TT 1053. When he was 19, just about a year prior to the offense, Knight met a girl through school and left Pittsburgh to stay with her. TT 1054. Soon after, Ms. Rue received a letter saying that her son had changed his SSI payee to be his new girlfriend's mother. TT 1054. Ms. Rue testified that there were numerous similar incidents where her son displayed poor judgment and naivety. TT 1053.

Knight ran away from his house for good when he was nineteen, leaving his prescribed medicine behind. TT 1052, 1058. Ms. Rue heard from a friend that he was staying in a homeless shelter in Washington, PA, and periodically got calls from her son. TT 1058. Just prior to the incident, Knight came home with a pregnant girlfriend, Amber Meidinger. TT 1062. They were looking for a place to stay, but Knight's mother would not allow him to move in with his girlfriend because his younger brother was still at home. TT 1063. Knight left with Amber and his mother was unaware of his whereabouts until after his arrest. TT 1059.

Natalie Rice, a friend of Knight's, also testified at his 2018 penalty phase hearing. She met him when her sister was receiving treatment at a Pittsburgh-area mental health facility where he was also being treated. TT 913. When Ms. Rice visited her sister, Knight often joined in on the visits, and they stayed in touch over the years, including after his arrest and initial conviction. TT 914. Ms. Rice explained that Knight often had a hard time distinguishing between friendships and relationships. TT 915. For example, he was only friends with her sister, but Ms. Rice remembered him pursuing a "child-like" romantic relationship with her and insisting that they had dated. TT 915, 918. Ms. Rice testified that he had a tendency not to understand the gravity of certain situations, including sticking his tongue out at her when she showed up in the courtroom to testify on his behalf. TT 916. Knight, she recalled, also tended to be agreeable, even agreeing with contradictory statements to maintain friendships. TT 916. He is "very easily led," she said. TT 916.

Two expert witnesses testified for the defense. Clinical Neuropsychologist Dr. Joette Deanna James reviewed Knight's childhood records and conducted an independent neuropsychological exam. She learned that Knight did not start speaking in single words until he was about two years old and at three, his speech was still hard to understand. TT 771. Soon after, he began speech therapy, which he continued through third grade. TT 771. Comprehending language, both spoken and information communicated through non-verbal cues, was an ongoing struggle for Knight and his delays in processing information made it difficult for him to socialize. TT 771. He could not sit still in traditional classroom, and he was often disciplined for impulsive behavior such as fidgeting, getting out of his seat, chewing on pencils, and chewing on his clothes. TT 773.

Dr. James noted Knight continued to have difficulty processing verbal and nonverbal information throughout middle and high school. TT 771. His actions and reactions were often impulsive and poorly regulated. TT 774. When he was 15, he got in trouble and responded by covering his face in tape to try to stop his own breathing. TT 774. Other children rejected him. TT 774. When he did make friends, he adopted their problematic behavior. TT 776. For example, a concern arose about his involvement in a group of students fighting with other students, but when the ringleader of that group left school, Knight stopped. TT 776.

Knight had received "a basket of diagnoses" throughout his childhood and some of the diagnoses included intellectual disability or concluded it was a concern that needed to be "ruled out." TT 811-812. In her own testing, Dr. James noted that it took Knight a long time to take instructions and that she had to repeat herself and change her wording when re-explaining things. TT 772. She found him to have impaired cognitive thinking and executive functioning, particularly with respect to his working memory. TT 782. Dr. James' testing showed poor decision making by Knight, even with constructive feedback. TT 785.

Dr. Christine Maguth Nezu, a clinical psychologist, also testified on Knight's behalf, and conducted a formal, standardized assessment of his adaptive behavior using the adaptive behavior assessment system (ABAS-3). TT 956. Further, she conducted collateral interviews with his mother, godmother, half-brother, and an adolescent friend to give comparative credibility to Knight's test results. TT 957 - 958. Through her testing and interviews, Dr. Nezu determined that Knight's performance across the three major areas of adaptive functioning – that is, conceptual social, and practical functioning -- was clearly below average to the extent of two standard deviations, meaning, in her professional opinion, that Knight is "profoundly adaptively impaired." TT 963.

Dr. Bruce Wright, a psychiatrist, testified for the prosecution in rebuttal. In 2018, nine days prior to the start of trial, Dr. Wright met with Knight for under an hour by his own estimation.[5] TT 1034. In lieu of formal intelligence or adaptive deficit testing, Dr. Wright conducted an observational mental status examination of Knight. TT 1011. He acknowledged there was "no doubt" that Knight had adaptive deficits but attributed those deficits to sources other than an intellectual disability, suggesting for example they could result from an attention deficit disorder. TT 1022-23. Additionally, Dr. Wright pointed to some of Knight's purported "strengths," including such things as his ability to make "basic meals;" care for pets; ride public transportation; respond to reinforcement and motivators; and be "pleasant and personable." TT 999, 1004. He further observed that Knight seemed to be operating well within the structured environment of prison. TT 1012-1015.

C. Despite multiple IQ tests in the borderline range and a 2012 test resulting in a score of 75, the court refused to allow Knight's jury to consider whether he was intellectually disabled because his 75 score was not documented prior to age 18

Evidence at trial demonstrated Knight had taken intellectual functioning tests throughout his life and his full-scale IQ scores have varied. TT 785. When he was seven years-old he obtained a 77 full-scale IQ on the Kaufman Assessment Battery for Children. TT 785, 786. The following year, when Knight was about 8 years old, he took the Wechsler Intelligence Scale for Children (WISC-III) and received a 97 IQ score. TT 812. Four years later in 2002, Knight took the WISC-III again, which indicated that he had an IQ of 93. TT 813. In 2012, after his arrest, Knight received an 82 IQ score on a Wechsler IV test administered to him by Dr. Michael McCue, a neuropsychologist who testified for the defense at the first sentencing trial. TT 1017-1018. After his initial conviction in 2012, Knight obtained an IQ score of 75, on a BETA III IQ

[5] Wright had previously assessed Knight prior to his 2012 sentencing trial.

test administered to him by the Pennsylvania Department of Corrections. TT 1016. In the most recent evaluation, Dr. James determined that Knight had an IQ of 77 after administering the WAIS-IV to him on February 22, 2018. TT 781, 768.

None of the experts testified that Knight was intellectually disabled. While both Dr. James and Dr. Nezu testified that his adaptive deficits were consistent with those of an intellectually disabled person, they stated they could not assess him with intellectual disability because the documented scores they reviewed or obtained were not low enough. Dr. Nezu explained that Knight's adaptive deficits rendered him so low functioning that she would refer to him as having a "functional intellectual disability," TT 966-67, but that he didn't "meet the math" for a diagnosis because he lacked a score of 75 or lower, which she understood to be necessary to meet the Pennsylvania legal standard. TT 964-65, 967. Dr. James reviewed Knight's "variable" IQ scores and noted he was in a "borderline" range of 70 to 79, TT 782, 785, but also emphasized it was "sort of surprising" his scores were that high given his severe adaptive deficits and troubles with "day to day" living. TT 786.

At the time of their assessments, neither James nor Nezu were aware that Knight did in fact have a documented IQ score of 75, from the prison's 2012 test. Dr. James never referred to the score in her testimony at all. Dr. Nezu testified she knew of the 75 score only because of a reference in Dr. Wright's report, which she reviewed shortly before trial. TT 967, 969, 983-85. Dr. Nezu had no recollection of seeing the score in the records she received from the defense and based her diagnosis on.[6] TT 983-84.

[6] Although Dr. Nezu acknowledged she could have "missed" the 2012 test in the reports she was provided, TT 984, the record demonstrates Knight's trial lawyers never obtained or provided their experts evidence of the 2012 test. The lawyers had relied upon the set of medical, school, and jail records that were obtained by Knight's lawyers at the first sentencing trial, which predated the prison's 2012 test. In response to a 2018 prosecution discovery request for the

Knight asked the jury be provided a standard instruction on intellectual disability, so they could determine whether he was ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002), and its progeny. See *Commonwealth v. Sanchez*, 36 A.3d 24, 51-55 (Pa. 2011) (establishing under Pennsylvania law that an intellectual disability determination is normally submitted to the jury at the penalty phase). At the conclusion of the penalty phase evidence, however, the trial court ruled the jury could not be instructed and consider the issue of intellectual disability because Knight had "failed to introduce any evidence of a documented IQ score of 75 or below prior to age 18." TT 1087-88 (included at Appendix C). On appeal, the Supreme Court affirmed the reasoning of the lower court. "[B]ecause Appellant failed to offer any evidence of an IQ score, documented prior to age 18, within the range established by *Miller* and *Sanchez* [i.e. 65 to 75], the trial court was not required to provide an Atkins instruction." *Knight*, 241 A.3d at 632.

REASONS FOR GRANTING THE WRIT

In Mr. Knight's case the Pennsylvania Supreme Court established a rule that a defendant must present an IQ score of 75 or lower that was "documented prior to age 18" as a precondition of having his intellectual disability claim considered by a jury. This rule is clearly wrong as a matter of both precedent and science. This Court has repeatedly disapproved of IQ cutoffs that would bar inquiry into claims in intellectual disability, and has recognized multiple times a that defendant who cannot meet the documentation requirement imposed in *Knight* may nonetheless have intellectual disability. *Brumfield v. Cain*, 576 U.S. 305 (2015); *Moore v. Texas (Moore I)*,

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records that the newly hired defense experts relied upon in their reports, counsel replied the "defense has received no new records in this remanded proceeding." *See* 7/17/18 Letter from Attorney Dawson to DA Peck, attached as Ex. 2 to Commonwealth's 8/23/18 Petition for the Disclosure of Records and Reports Pursuant to P.A. Rules of Criminal Procedure 573.

137 S.Ct. 1039, 1049 (2017) The clinical standards informing this Court's decisions regarding intellectual disability, likewise, establish that documentation of IQ scores prior to age 18 is unnecessary for a diagnosis. These legal and clinical standards are sufficiently clear that no other jurisdiction has imposed such a threshold requirement.

Certiorari is appropriate in this case because the Pennsylvania Supreme Court has plainly misapprehended this Court's precedent and established a precedential rule that prevents capital defendants like Knight who present substantial evidence of intellectual disability from even having their claims *considered* by a fact-finder. Such a practice creates an "unacceptable risk that persons with intellectual disability will be executed." *Hall v. Florida*, 572 U.S. 701, 704 (2014).

I. PENNSYLVANIA'S THRESHOLD IQ REQUIREMENT FOR INTELLECTUAL DISABILITY CLAIMS IS PLAINLY INCONSISTENT WITH CLINICIAL STANDARDS AND THIS COURT'S PRECEDENT.

A. Threshold IQ requirements inconsistent with clinical standards may not be used to bar the consideration of intellectual disability claims

In *Atkins v. Virginia*, 536 U.S. 304 (2002), this Court held the imposition of the death penalty on a "mentally retarded" person was cruel and unusual punishment that violated the Eighth Amendment.[7] Citing the then-current clinical definitions, the Court noted that mental retardation involved "not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18." *Atkins* at 317, see also Atkins at 308, n.3 (citing clinical definitions used by the American Association on Mental Retardation (AAMR) and American Psychiatric Association). The Court noted that capital punishment would not serve as an effective deterrent for such

[7] As noted in *Hall*, 572 U.S. at 704, "intellectual disability" became the accepted term for condition formerly known "mental retardation" after *Atkins* was decided. This petition uses the term "intellectual disability," but older cases cited within use the term "mental retardation" for the same condition.

offenders, that they lacked the moral culpability of other criminals, that they possessed a reduced capacity to assist in their defense, and that a consensus had developed that such persons should not be executed. *Id.* at 306, 319-21.

Atkins recognized that "subaverage intellectual functioning," the first prong of the inquiry, is assessed though standardized IQ tests. Citing clinical standards, the Court noted "'mild' mental retardation is typically used to describe people with an IQ level of 50-55 to approximately 70," Atkins, 536 U.S. 308 at n. 3, and that "an IQ between 70 and 75 or lower . . . is typically considered the cutoff score for the intellectual functioning prong." *Id.* at 309 at n.5. While *Atkins* "left[] to the States the task of developing appropriate ways to enforce the constitutional restriction upon their execution of sentences." *Atkins* at 317, citing *Ford v. Wainright*, 477 U.S. 399, 405, 416-17 (1986), this Court has subsequently and repeatedly made clear this delegation does not mean that States can ignore clinical standards by imposing threshold IQ score requirements that would bar consideration of valid claims of intellectual disability.

First, in *Hall v. Florida*, 572 U.S. 701 (2014) the Court addressed a Florida law that barred a finding of intellectual disability unless the defendant presented evidence of an IQ score of 70 or lower – i.e. a score that was two standard deviations below the mean IQ test score of 100. See *Id.* at 711. The Court found this mandatory IQ cutoff "disregards established medical practice in two interrelated ways." *Hall* at 712. First, the cutoff "takes an IQ score as final and conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence." *Id.* Second, the cutoff failed to recognize that an IQ score is "on its own terms, imprecise," particularly because it failed to account for the "standard error of measurement" (SEM) recognized by professionals for such tests. Id; see also Id at 718-20 (noting that Atkins itself "acknowledges the inherent error of IQ testing"). Throughout its opinion, the Court cited to

clinical standards for defining intellectual disability, See e.g. *Hall* at 704, 713 (citing the Diagnostic and Statistic Manual of Mental Disorder, the "DSM-5"), *Id.* at 713 (citing the American Association of Intellectual and Developmental Disabilities R. Schalock et al., User's Guide To Accompany the 11th Edition of Intellectual Disability: Definition, Classification, and Systems of Supports 22 (2012), the "AAIDD Manual"). Recognizing that "[i]intellectual disability is a condition, not a number," *Hall* held that Florida had committed constitutional error by requiring an unscientific IQ threshold and by accordingly refusing to consider other evidence – specifically, evidence of the defendant's adaptive deficits -- in making the ultimate determination of whether the defendant was intellectually disabled. See *Id.* at 723 ("It is not sound to view a single factor as dispositive or a conjunctive and interrelated assessment").[8]

The Court confronted another IQ threshold in *Brumfield v. Cain*, 576 U.S. 305 (2015). Brumfield raised an intellectual disability claim in a state post-conviction petition (he was convicted and sentenced prior to *Atkins*), and sought to further develop that claim with additional resources and via an evidentiary hearing. *Id.* at 308-09. In support, he pointed to evidence adduced at his original sentencing, including an IQ test administered by the defense expert that produced a score of 75, and another defense expert whose examination "came up with a little bit higher IQ." *Brumfield* at 316; see also *Brumfield v. Cain*, 854 F.Supp.2d 366, 389 (M.D. La. 2012). The state courts found this evidence of IQ insufficient to demonstrate "subaverage intelligence" that merited further development or consideration at a hearing.

[8] *Hall* also reiterated that intellectually disability requires proof of onset during the "developmental period." *Id.* at 710 The standards in place at the time of the *Atkins* and *Hall* decisions understood this period to last until age 18. The AAIDD's current standard states the developmental period "is defined operationally as before the individual reaches age 22." AAIDD Manual 12th ed.(2021), pg. 1.

Reviewing this decision under the deferential standards of federal habeas corpus, this Court found it constituted an "unreasonable determination of the facts." *Brumfield* at 316. The Court noted the IQ test result of 75 was "squarely within the range of potential intellectual disability" when accounting for the SEM, as defined by the clinical sources relied upon by both *Hall* and *Atkins*. *Id.* at 315-16. The possibility of another, higher IQ score (a score that would have been outside the SEM-range for intellectually disability) did not make the state court preclusion of a hearing reasonable either. *Id.* at 316. The Court also rejected arguments that the state court could have reasonably found Brumfield's adaptive deficits insufficient to merit a hearing, *Id.* 317-22, and that Brumfield had failed to show his ID manifested "before he reached adulthood." *Id.* at 323. In rejecting the latter claim, the Court noted he had presented "ample" evidence of his" intellectual shortcomings as a child." *Id.* The Court placed no significance on the fact that Brumfield's only documented IQ score resulted from adulthood testing done in preparation for his capital trial.

Finally, in *Moore v. Texas (Moore I),* 137 S.Ct. 1039, 1049 (2017), this Court addressed the Texas Court of Criminal Appeals' (CCA) conclusion that the defendant's "IQ scores established that he is not intellectually disabled." This Court noted (and did not dispute) the CCA's conclusion that Moore had two reliable IQ scores relevant to this determination: a score of 78 in 1973 (a pre-offense test done when Moore was 13 years old) , and a score of 74 in 1989 (a post-offense test done by the prison at age 30). *Moore I* at 1047; *Ex Parte Moore*, 470 S.W. 3d 481 at 514, 519 (Tex. Crim. App. 2015). Texas law states that significantly subaverage intellectual function is "generally shown by an IQ of 70 or less." *Ex Parte Moore*, at 513. The CCA found Moore could not meet this prong, noting that his childhood score of 78, even assuming a SEM of 5 points, was above the range for subaverage intellectual functioning, and finding that the score

of 74 showed that his intellectual functioning was "above the intellectually disabled range" when the "adverse circumstances" under which the test was purportedly administered were accounted for. *Ex Parte Moore* at 519.

This Court reversed, once again concluding a state court had improperly imposed an unscientific IQ score threshold. Under *Hall*, it was enough that Moore had one score (albeit from a test completed during his imprisonment and well after he turned 18) that, when adjusted for the SEM, yielded a range for which the lower end fell at 70 or below. *Moore I* at 1049. With that much established the medical standards obliged the CCA to "move on to consider Moore's adaptive functioning" to determine the ultimate issue of whether he was intellectually disabled. *Id*. The fact that Moore had another valid score of 78, obtained before he turned 18, did not factor into the Court's analysis. Furthermore, the Court disclaimed the CCA's reliance on "other sources of imprecision in administering the test to a particular individual" in disregarding the lower end of the range for the 74 score, holding that such individual factors "cannot *narrow* the test-specific standard error range." *Id*. at 1050 (emphasis in original).

The Court similarly determined the CCA erred in its alternative finding that Moore did not demonstrate significant adaptive deficits, because it relied on unscientific standard for assessing such deficits that was inconsistent with prevailing clinical standards. *Moore I* at 1050-53. The Court remanded for further consideration. In *Moore v. Texas (Moore II)*, 139 S.Ct. 666 (2019), this Court reviewed the CCA's decision on remand, in which that court once again concluded Moore was not intellectually disabled. This Court found the CCA had largely "repeat[ed] the analysis we previously found wanting." *Moore II* at 670. Assessing the evidence itself, this Court concluded that "Moore has shown he is a person with intellectual disability." *Id.* at 672.

B. Pennsylvania established a rule in Knight's case that a defendant must produce an IQ score of 75 or lower "documented" before he turned 18 as a pre-condition of having an intellectual disability claim considered

Pennsylvania's rules for intellectual deficiency claims in capital cases are set by the Pennsylvania Supreme Court. In *Commonwealth v. Miller*, 888 A.2d 624 (Pa. 2005), the court, referencing *Atkins* and the clinical standards it relied upon, defined "mental retardation." The court found the condition involved "(1) limited intellectual functioning (2) significant adaptive limitations; and (3) age of onset." *Id.* at 630. The court recognized that intellectual function "is best represented by IQ scores," and that limited or subaverage functioning would be "approximately two standard decision (or 30 points) below the mean (100)." *Id*. Anticipating this Court's decision in *Hall*, however, the Pennsylvania Supreme Court recognized the limitations of those scores, noting the standard error of measurement which "has been estimated to be three to five points for well-standardized measures," and citing an example that "subaverage intellectual ability is commonly ascribed to those who test below 65-75 on the Wechsler scales." *Id*.

In *Commonwealth v. Sanchez*, 36 A.3d 24 (Pa. 2011), the court exercised its state constitutional power of judicial administration to establish a procedure for raising claims in capital cases. The court held that a "colorable Atkins issue" should ordinarily be submitted to a jury for penalty phase decision. *Id*. at 62, see also *Id*. at n. 9 ("an Atkins claim is not properly for the factfinder unless there is competent evidence to support the claim, under the standard announced in *Miller*."). The court further established that the defendant had the burden to prove the claim, the jury's finding of ineligibility had to be unanimous and that the jury's intellectual disability determination should be made before proceeding to the weighing of aggravating and mitigating circumstances. *Id*.

Neither *Miller* nor *Sanchez* created any IQ-test threshold requirement the defendant needed to satisfy before the jury could consider his claim of intellectual disability. *Miller* stated "we do not adopt a cutoff IQ score for determining mental retardation in Pennsylvania, since it is the interaction between limited intellectual functioning and deficiencies in adaptive skills that establish mental retardation." *Id.*, 888 A.2d at 631 and n. 9 (citing the DSM-IV for the proposition that persons with IQs above 70 can still be diagnosed with mental retardation if their adaptive deficits are sufficiently severe.). The court reiterated it had "consistently refused to adopt a 'cutoff IQ score' for determining mental retardation in *Commonwealth v. Hackett*, 99 A.3d 567, 609 at n.8 (Pa. 2014), where it rejected the Commonwealth's argument to impose an "objective legal standard" that would require the proof and/or absence of IQ scores at certain levels. *Id*. at 608-10. *See also Commonwealth v. Bracey*, 117 A.3d 270, 287 (Pa. 2015) (rejecting Commonwealth's request "to prohibit individuals with a prior IQ score of 76 or above from asserting intellectual disability.").

Knight's sentencing trial contained evidence supporting all three prongs of the definition. Knight scored 75 on one IQ test administered by the Pennsylvania Department of Corrections in 2012, within the range *Miller* recognized could be consistent with intellectual deficiency. Miller, 888 A.2d at 631-32 & n.9. Other scores in the record were higher, but still included two scores at 77, one of them obtained in his first test when he was 7 years old, and another in his most recent expert evaluation by Dr. Joette James. Knight presented both lay and expert testimony supporting significant adaptive deficits. And this testimony demonstrated these deficits existed well before Knight turned 18 – indeed, he was only 20 at the time of the offense.

Knight asked the jury be provided Pennsylvania Suggested Standard Criminal Jury Instruction 15.2502F.2, which was drafted in 2016 by the Pennsylvania Bar Institute and based on the decisions in *Miller* and *Sanchez.* The instruction provided the following definitions.

> 4. To find the defendant mentally retarded, you must find the following three factors:
>
> First, that the defendant has significant, sub-average intellectual functioning. Generally, this is best illustrated by IQ scores. While there is no mathematical cutoff IQ score for determining mental retardation, an IQ score at or below the range of 65-75 may be considered to reflect sub-average intellectual functioning.
>
> Second, the defendant must also show significant limitations in [his] [her] adaptive behavior. Adaptive behavior means the collection of conceptual, social, and practical skills people learn in order to function in day-to-day life. Limitations in this sort of behavior are reflected by difficulties adjusting to the ordinary demands of daily life.
>
> Third, the defendant must also prove that the onset of these two conditions occurred before [he] [she] was 18 years old.

Pa. SSJI (Crim) §15.2502F.2. Consistent with the court decisions, the instruction disclaimed any IQ score cutoff and did not establish any evidentiary thresholds before the jury could consider the claim.

Yet the trial court refused to give the §15.2502F.2 instruction. The judge's contemporaneous explanation was as follows:

> If I recall the testimony correctly, there was only one out of any [IQ tests] that were ever done in his life that were 75 and that was done at the age of 22 when the Defendant was incarcerated at the SCI. Therefore, it doesn't meet the third prong that the Defendant must prove both conditions, that is, the first and second condition occurred before he was 18 years old so there is no evidence whatsoever and it would make no sense for me to give that instruction to the jury.

TT 1087-88 (included at Appendix C).

In a post-trial order, the trial judge offered a different explanation, claiming the 75 IQ score "was not relied upon either party as a reliable result" and that the defendant's own experts

concluded that Knight's "IQ did not meet the definition of 'intellectually disabled" as established by *Atkins*. See 2/28/19 Opinion and Order of Court, pp. 41-43 (included at Appendix B). In fact, none of the experts had claimed the 75 IQ resulted from a test that was invalid, or claimed it was unreliable because it was administered after Knight turned 18. Dr. Wright, the Commonwealth's expert, only noted the test was "brief" and "less specific" than a previously administered Wechsler test. TT 1016. Dr. Nezu generally noted that intuitional tests could be less reliable than others, but acknowledged he had never assessed Knight's 75 score and only knew of it because of a reference in Wright's report that he read shortly before trial. TT 967, 969, 984-85. Dr. James never mentioned the score at all.[9] The record demonstrates the defense experts, both of whom testified Knight suffered from severe adaptive deficits from the time of his childhood that were entirely consistent with those of an intellectually disabled person, didn't fail to diagnose Knight because his 75 IQ score was unreliable, but because they didn't know about it.

On appeal, Knight argued the Court's decisions in *Hall* and *Moore* required the jury to be allowed to consider his claim under the totality of the evidence, including the compelling evidence of his adaptive deficits. See *Knight*, 241 A.3d at 631-32 (describing argument on appeal); Appellant's July 24, 2019 Opening Brief ("OB"), *available at* 2019 PA S. CT. BRIEFS LEXIS 991 *21-23 Yet rather than assess whether the record as a whole presented a colorable intellectual disability issue that merited an instruction, or defend the lower court's post-trial justification, the Pennsylvania Supreme Court returned to the original justification cited by the trial judge. The Court stated Knight's 75 IQ score was unreliable simply because it was not

[9] As explained in fn. 6 supra, the defense experts did not have the 75 score for their pre-trial assessments because Knight's defense counsel did not obtain any new records following Knight's initial 2012 sentencing trial, which predated the 2012 IQ test.

"documented prior to age 18." *Knight*, 241 A.3d at 631.[10] At the end of its discussion, the Pennsylvania Supreme Court invoked the lack of a 75 IQ score documented prior to age 18 as its *ratio decidendi*:

> As noted above, the trial court explained that it rejected Appellant's request for an Atkins instruction because Appellant failed to introduce any evidence of a documented IQ score of 75 or below prior to age 18. Appellant himself conceded this fact, and, as the trial court found, his own experts likewise conceded that he did not meet the criteria for a determination that he was intellectually disabled under Atkins. Accordingly, **because Appellant failed to offer any evidence of an IQ score, documented prior to age 18, within the range established by Miller and Sanchez, the trial court was not required to provide an Atkins charge to the jury.**

Knight, 241 A.3d 632 (emphasis added).

C. Pennsylvania's documentation requirement is contrary to this Court's decisions in Brumfield and Moore

Despite the Pennsylvania Supreme Court's prior insistence that it would not apply a IQ "cutoff" for an intellectual disability inquiry, *Knight* creates two such cutoffs, both of which a defendant must meet before a jury can be instructed on (and thus consider) the issue. First, the defendant needs to have an IQ score of 75 or lower. Second, that score must have been

[10] The opinion claimed this "reliability" standard derived from *Miller* and was recognized in Knight's brief. *Id.* at 631. However *Miller* nowhere stated that a particular IQ had to be proven, let alone documented prior to the age of 18, before a claim of intellectual disability could be considered. Knight's appellate brief nonetheless appeared to assume that *Miller* and *Sanchez* applied a "strict mathematical cutoff" requiring a score of 75, and argued that was improper under this Court's precedent. See OB at *22. But the brief did not assume that such score needed to be documented prior to age 18, and in fact it cited Knight's score of 75 as a reason why he should have obtained the instruction. OB at *22 ("Thus, this severely impaired 22 yr. old, with an IQ of 75, was not determined eligible for a jury instruction on intellectual disability which could have precluded the death penalty in this case.").

documented in a test before he turned 18. Even assuming the first requirement can be imposed under this Court's precedent,[11] the second plainly contradicts this Court's prior rulings.

In *Brumfield*, which the *Knight* decision never cited, the *only* IQ score the petitioner presented in favor of his request to develop his claim was a score of 75 obtained well after he turned 18.[12] *Brumfield*, 576 U.S. at 316. The Court held that the state court made an "unreasonable determination of facts" in concluding this score was insufficient to justify further inquiry, finding it sufficient that the score of 75 fell "squarely in the range of potential intellectual disability" accounting for the SEM. *Id.* at 315-16.

In *Moore*, the petitioner's only valid score documented prior to age 18 was 78, above the range for intellectual disability even accounting for the SEM. See *Ex Parte Moore*, 470 S.W.3d at 519. Like Knight, Moor*e*'s only valid score within the SEM for intellectually disability (a 74) was obtained from a prison examination after he turned 18 – indeed, Moore was 30 years old when this test was done. *Id.* at 495. This Court nevertheless revered the CCA's denial of relief, holding the latter score was sufficient to require the court "to move on to consider Moore's adaptive functioning." *Moore I*, 137 S. Ct. at 1049. "[W]e require that courts continue the inquiry and consider other evidence of intellectual disability where an individual's IQ score, adjusted for the test's standard error, falls within the clinically established range for intellectual-functioning deficits." *Id.* at 1050.

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[11] In *Hall*, the petitioner did not question laws in other states "which use a bright-line cutoff at 75 or greater" *Id.*, 572 U.S. at 715. But see *Id*. at 723 ("It is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment.').

[12] When allowed to develop the claim in federal court, Brumfield produced three additional IQ tests, all done more than a decade after the original by defense and state experts in preparation for the determination of his *Atkins* claim by the federal courts. See *Brumfield v. Cain*, 854 F.Supp.2d 366, 389-90 (M.D. La. 2012). Brumfield as such never produced *any* IQ score documented before age 18, but was still determined to be intellectually disabled by the district court.

If a state could reasonably bar consideration of an intellectual disability claim because a score of 75 or lower was not documented before the petitioner turned 18, the Court would not have granted relief for Brumfield or Moore, neither of whom could meet that requirement. To the contrary, the Court granted habeas relief to Brumfield, reversed Moore's original denial of relief, and then, when the CCA reached the same result on remand, granted certiorari again and made the ultimate finding that Moore was in fact a "person with intellectual disability." *Moore II*, 139 S.Ct. at 672. The Pennsylvania requirement for pre-age 18 documentation of scores is irreconcilable with this Court's precedent.

D. Pennsylvania's documentation requirement is contrary to clinical standards for diagnosing intellectual disability

From *Atkins* onward, this Court's jurisprudence has emphasized the centrality of the medical community's current standards in assessing intellectual disability. See *Atkins* 536 U.S. at 308, n. 3, 317, n. 22 (citing then-current standards for definition of "mental retardation"); *Hall*, 572 U.S. at 721-22 (holding that the legal determination of intellectual disability "is informed by the medical community's diagnostic framework" and faulting Florida's IQ cutoff because it "goes against the unanimous professional consensus."); *Moore I*, 137 S.Ct. at 1053 (holding the "medical community's current standards supply one constraint" on States' leeway in enforcing *Atkins*, and faulting the CCA for relying on "nonclinical" factors in assessing adaptive deficits).

Like the rules in *Hall* and *Moore I*, the Pennsylvania Supreme Court's documentation requirement is unconstitutional because it is contrary to clinical standards for diagnosis. The requirement conflates the requirement of subaverage intellectual capacity (the first prong of the intellectual disability clinical inquiry) with the requirement of onset before the age of 18 (the third prong). Clinical standards recognize an IQ test (much less a formal assessment) prior to age 18 is not necessary to demonstrate the onset of intellectual disability during the developmental

period. *See e.g.* AAIDD Manual 11th ed. 27 ("disability does not necessarily have to have been formally identified" prior to age 18 to meet the age on onset criterion); Matthew H. Scullin, *Large State-Level Fluctuations in Mental Retardation Classifications Related to Introduction of Renormed Intelligence Test*, 111 AM. J. MENTAL RETARDATION 322, 331 (2006) ("There is no professionally recognized requirement for a developmental period classification of mental retardation or developmental period IQs in the mental retardation range from childhood to establish mental retardation for these [Supplemental Security Income] benefits."); Daniel J. Reschly, *Documenting the Developmental Origins of Mild Mental Retardation*, 16 APPLIED NEUROPSYCHOLOGY 124, 125 (2009) ("Persons can, of course, be properly diagnosed as MR as adults even if no official diagnosis can be found over the ages of birth to 18, but evidence must exist that the condition of MR existed before age 18."); Marc J. Tassé, *Adaptive Behavior Assessment and the Diagnosis of Mental Retardation in Capital Cases*, 16 APPLIED NEUROPSYCHOLOGY 114, 117 (2009) ("It should be noted that 'originated during the developmental period' does not preclude making a first time diagnosis of mental retardation when an individual is an adult. The clinician must, however, adequately document that the deficits in intellectual and adaptive functioning were present before the end of the developmental period."); Robert L. Schalock & Ruth Luckasson, CLINICAL JUDGMENT 37-41 (1st ed. 2005) (discussing case example in which the individual had not had an IQ test administered during the developmental period, but retrospective investigation revealed functional manifestations had been present during the individual's childhood).

Pennsylvania's requirement makes it impossible for intellectually disabled persons to be excluded from execution if they did not happen to be tested prior to 18, or if their scores became lost or unavailable, or if their scores resulted from faulty testing. Clinicians recognize a

retrospective diagnosis of intellectually disability can be appropriate even when the subject lacked proper testing and diagnosis during their childhood. AAIDD Manual 11th ed, 102 ("a number of reasons might explain the lack of an earlier, official diagnosis of ID"). Pennsylvania's unreasonable barrier ignores this reality and creates an "unacceptable risk that persons with intellectual disability will be executed." *Hall v. Florida,* 572 U.S. at 704.

Barring consideration of intellectual disability because of a pre-age 18 documentation requirement is particularly inapposite in this case, where Knight was only 20 at the time of his offense. Indeed, under the most current AAIDD clinical standards, Knight was still *within* the developmental period, which is now understood to last until age 22. AAIDD Manual 12th ed (2021).,pg. 1. That aside, the expert and lay testimony overwhelmingly demonstrated Knight's issues with capacity and deficits were present before he turned 18. Knight, for example, has received SSDI benefits since he was 6 years old, had been placed in special education since elementary school, and demonstrated adaptive deficits throughout his childhood. Nothing in the evidence suggests his issues arose from any event (for example, an accident leading to traumatic brain injury) occurring after he turned 18. See AAIDD Manual 11th ed. 27 (the "purpose of the age of onset criterion is to distinguish ID from other forms of disability that may occur later in life"). A case such as Knight's with abundant evidence from other sources concerning age of onset demonstrates why a pre age-18 documentation requirement is arbitrary and unreasonable.

E. Pennsylvania's documentation requirement is anomalous

No other state appears to require that a particular IQ score be documented prior to age 18 before an intellectual disability claim may be considered by the fact-finder. Notably, even those state courts whose standards were overruled in *Hall* and *Moore* for being unduly restrictive had not imposed any such requirement. See *Cherry v. State*, 959 So. 2.2d 702, 711-14 (Fla. 2007)

(holding defendant's IQ score of 72 obtained from post-offense testing failed to meet strict IQ cutoff of 70 imposed prior to *Hall*, but attributing no significance to its timing); *Ex Parte Briseno*, 135 S.W. 3d 1, 14 & n. 53 (Tex. Crim. App. 2004) (evaluating intellectual capacity based on adulthood IQ scores and accepting testimony that "recent tests most accurately and comprehensively reflected applicant's true IQ," as compared to his childhood scores).

In a pre-*Hall* decision, the Idaho Supreme Court imposed a prima facie requirement that "there must be evidence showing that [the defendant's] IQ was 70 or below prior to his eighteenth birthday." *Pizzuto v. State*, 202 P.3d 642, 651 (Idaho 2008). But that court considered a test done after the defendant turned 18 as "evidence" of his pre-18 intellectual capacity, *Pizzuto* at 651-52, and the rule has not been subsequently understood to require that a test with the qualifying score be "administered" before the defendant's 18th birthday. See *Pizzuto v. Blades*, 947 F.3d 510, 529 (9th Cir. 2019) (refuting this interpretation of the opinion).[13]

Other state courts have expressly or impliedly rejected any threshold requirement that an IQ score be documented before age 18. See *Murphy v. State*, 54 P.3d 556, 567 at n. 19 (Okla. Crim. App. 2002), *overruled on other grounds by Blonner v. State*, 127 P.3d 1135, 1139 (Okla. Crim. App. 2006) ("a defendant need not, necessarily, introduce an intelligent quotient test administered before the age of eighteen or a medical opinion given before the age of eighteen in order to prove his or her mental retardation manifested before the age of eighteen, although such proof would surely be the more credible of that fact."); *State v. White*, 885 N.E. 2d 905, 916 (Ohio 2008) (reversing lower court's finding that defendant failed to prove "onset before age

[13] The Ninth Circuit noted the IQ cutoff required by *Pizzuto* was erroneous under this Court's current precedent, but denied relief in habeas corpus review case because the imposition of a hard IQ cutoff of 70 in 2008 was not beyond "fairminded disagreement" before *Hall*, *Brumfield*, and *Moore* were decided. *Pizzuto v. Blades*, 947 F.3d at 528. The Circuit did not seek to defend a pre-age 18 documentation requirement on that basis.

18," despite the absence of any IQ or adaptative deficits test administered before age 18); *People v. Superior Court (Vidal),* 155 P.3d 259, 267 (Cal. 2007) (rejecting any IQ cutoff on the grounds that absent any legislative determination, "[t]he question of how best to measure intellectual functioning in a given case in thus one of fact to be resolved in each case on the evidence, not by appellate promulgation of a new legal rule.").

The decision below cited no precedent from Pennsylvania or from any other state or federal court in support of its documentation requirement. Jurisdictions outside of Pennsylvania that have considered the issue agree that such a requirement is unnecessary and improper.

II. CERTIORARI SHOULD BE GRANTED TO CORRECT A CLEARLY ERRONEOUS LEGAL STANDARD THAT WILL CAUSE INTELLECTUALLY DISABLED PEOPLE TO BE SENTENCED TO DEATH

The Pennsylvania Supreme Court's precedential decision in Knight's capital case relies upon an anomalous legal standard that contradicts multiple decisions by this Court. The Court should correct this error.

Though this Court rarely grants certiorari because a lower court has erred, it does so on occasion when the lower court's opinion "reflects a clear misapprehension" of an area of law "in light of our precedents." *Tolan v. Cotton*, 134 S.Ct. 1861, 1868 (2014); *see also Brosseau v. Haugen*, 543 U.S. 194, 197-98 (2004) (per curiam) (summarily reversing the lower court "to correct a clear misapprehension" of applicable law); *Florida Dept. of Health and Rehabilitative Servs. v. Florida Nursing Home Assn.*, 450 U.S. 147, 150 (1981) (per curiam) (summarily reversing an opinion that could not "be reconciled with the principles set out" in this Court's relevant jurisprudence). "[S]ummarily deciding a capital case, when circumstances so warrant, is hardly unprecedented." *Wearry v. Cain*, 136 S.Ct. 1002, 1008 (2016) (per curiam). When appropriate, granting certiorari in this situation is necessary because "[t]he alternative to granting

review, after all, is forcing [the defendant] to endure yet more time on . . . death row in service of a conviction that is constitutionally flawed." *Id.*

Since 2019, this Court has twice issued summary dispositions to correct erroneous lower court decisions concerning determinations of intellectual disability. See *Moore II*, 139 S.Ct. 666, 670 (summarily reversing Texas CCA's denial of relief because the decision on remand was "inconsistent with our opinion in [Moore I]"); *Shoop v. Hill*, 139 S.Ct. 504, 505 (2019) (summarily reversing Sixth Circuit's grant of habeas relief on intellectual disability claim because its reliance on *Moore I* was "plainly improper" as that decision was not "handed down until long after the state court decisions" denying his claim). Knight respectfully suggests a summary reversal would be similarly appropriate to correct the plain error in this case.

Absent the erroneous documentation requirement, the evidence presented at Knight's sentencing trial would appear to present a "colorable" claim of intellectual disability. His IQ score of 75 was within the margin of error recognized to be sufficient to support a claim in *Hall*, *Moore I*, as well as in the Pennsylvania Supreme Court's *Miller* decision. And Knight presented evidence of severe adaptive deficits via both lay and expert testimony that manifested well before his 18th birthday. Although he lacked an expert opinion on the ultimate issue of intellectual deficiency, neither Pennsylvania nor this Court has held such an opinion is necessary before a jury may consider a claim. See *Hall* at 721 (noting that while the "determination [of intellectual disability] is informed by the views of medical experts, "[t]heir views do not dictate the court's decision."). Other states recognize claims should be considered absent such testimony. *State v. Ford*, 140 N.E. 3d 616, 653 (Ohio 2019) (trial court erred in dismissing intellectual disability based on unanimous opinion from three defense and medical experts that defendant was not intellectually disabled, as "the legal determination of intellectual disability is

distinct from a medical diagnosis."); *State v. Williams*, 831 So.2d 835, 858 (La. 2004) (remanding for further hearing on claim even though "defendant's expert opined he is not mentally retarded."). This is especially true given that Knight's defense experts, who were unaware of the 75 IQ score at the time of their assessments, "based [their] opinion on less than a complete history of defendant's diagnoses and treatment." *Williams* at 856.

As in *Hall, Brumfield,* and *Moore I*, however, the Court need not and should not pass on the ultimate merits of Knight's intellectual disability claim. In Pennsylvania, the sentencing jury is normally responsible for this decision. In this case, the issue was whether the evidence was so lacking that Knight's jury could not even *consider* his claim of intellectual disability. The Pennsylvania courts avoided this issue by creating a plainly erroneous legal requirement of pre age-18 IQ test documentation. The case should be remanded so the Pennsylvania Supreme Court can properly determine under state and federal law whether Knight presented a sufficiently "colorable" claim of intellectually disability that merited consideration at his sentencing trial.

CONCLUSION

The Pennsylvania courts relied upon a plainly incorrect legal standard to bar Knight's jury from hearing his claim of intellectual disability. The writ of certiorari should be granted.

Respectfully submitted,

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