

No. 17-8174

IN THE
SUPREME COURT OF THE UNITED STATES

RANDY PARKER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE LOUISIANA COURT OF APPEAL FOR THE FIRST CIRCUIT

REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

Louisiana does not dispute its status as the only jurisdiction in the country that allows a mandatory life-without-parole sentence for a felony murder committed with a negligent *mens rea*.¹ Instead, Louisiana insists that (1) the Court of Appeal never addressed the question presented by Mr. Parker’s petition for certiorari, Resp. Br. at 3–4; (2) there is no evidence of Mr. Parker’s intellectual disability in the record, Resp. Br. at 5; (3) Mr. Parker’s mistreatment of D.S. was intentional rather than negligent, Resp. Br. at 8–9; and (4) Mr. Parker’s Eighth Amendment claim “clearly” fails under *Tison v. Arizona*, 481 U.S. 137 (1987). Resp. Br. at 9–11. Louisiana is wrong on all counts.

I. THE COURT OF APPEAL CONSIDERED AND REJECTED MR. PARKER’S EIGHTH AMENDMENT CHALLENGE TO HIS MANDATORY LIFE-WITHOUT-PAROLE SENTENCE

Contrary to Louisiana’s suggestion that the Court of Appeal never decided “whether a life-without-parole sentence on an intellectually disabled, criminally negligent defendant is unconstitutional,” Resp. Br. at 4, the Court of Appeal considered and rejected Mr. Parker’s Eighth Amendment claim. Mr. Parker presented the claim to the Court of Appeal in his sixth assignment of error, which began with the following caption: “A Sentence Of Life Without Parole For An Offense Of Negligence For An Intellectually Disabled Defendant Violates The Eighth

¹ Louisiana had an obligation to raise any perceived misstatement of fact or law in its opposition brief. Supreme Court Rule 15.2 (“[T]he brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition.”).

Amendment.”² Resp. App. A at 22–23. Citing *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Miller v. Alabama*, 567 U.S. 460 (2012), he argued that “[a]n automatic sentence of life without parole for an intellectually disabled defendant made culpable by his negligence is a cruel and unusual punishment in violation of the Eighth Amendment.” Resp. App. A at 23.

The Court of Appeal rejected Mr. Parker’s Eighth Amendment claim, concluding that the trial court “had no [constitutional] reason to deviate downward from the mandatory sentence of life imprisonment at hard labor” Pet. App. A at 25. Even when a criminal defendant has been “deemed intellectually disabled,” the Court of Appeal reasoned, “the Louisiana Supreme Court has upheld a sentence of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence” Pet. App. A at 24.³

II. THE COURT OF APPEAL CONCLUDED THERE WAS “SUFFICIENT EVIDENCE” OF MR. PARKER’S INTELLECTUAL DISABILITY AND REJECTED HIS EIGHTH AMENDMENT CLAIM ON THE ASSUMPTION THAT HE WAS “INTELLECTUALLY DISABLED”

Louisiana suggests “there is no evidence of intellectual disability in the record,” emphasizing that the trial court “made no explicit findings” of intellectual disability

² Louisiana is therefore wrong when it argues that Mr. Parker’s sentencing challenge “was part and parcel of his argument in assignment of error number three that the trial court, in finding the petitioner acted with ‘ordinary negligence’ as opposed to ‘criminal negligence,’ erred in finding the petitioner guilty of second degree murder.” Resp. Br. at 4.

³ Based on its conclusion that Mr. Parker’s sentence was constitutional, the Court of Appeal denied Mr. Parker’s ineffective-assistance-of-counsel claim, concluding that Mr. Parker failed to show a “reasonable probability that his sentence would have been different had his trial counsel filed a motion to reconsider sentence, requested a lesser sentence, or presented mitigating circumstances.” Pet. App. A at 25.

under Article 905.5.1 of the Louisiana Code of Criminal Procedure. Resp. Br. at 5–6. But Article 905.5.1, which applies only to capital cases, did not require the trial court to make any explicit findings regarding Mr. Parker’s intellectual disability in this non-capital case. *See* La. C. Cr. P. art. 905.5.1. And the Court of Appeal concluded “there was sufficient evidence in the record to establish [Mr. Parker’s] intellectual disability.”⁴ Pet. App. A at 23 n.5. It then rejected Mr. Parker’s Eighth Amendment claim on the assumption that he was “intellectually disabled.” Pet. App. A. at 24; *see also* Resp. Br. at 7 (conceding that the Court of Appeal rejected Mr. Parker’s “assignments of error related to sentencing” on the “assumption of intellectual disability”).

III. THE TRIAL COURT REJECTED THE STATE’S THEORY THAT MR. PARKER INTENTIONALLY MISTREATED THE CHILD AND CONVICTED HIM OF SECOND-DEGREE FELONY MURDER BECAUSE HE “SHOULD HAVE KNOWN” THAT HIS ATTEMPTS TO DISCIPLINE THE CHILD WOULD RESULT IN GREAT BODILY INJURY OR DEATH

The trial court convicted Mr. Parker of felony murder after concluding that he committed the underlying felony of cruelty to juveniles. A.R. 615–16. Cruelty to juveniles requires either “intentional” or “criminally negligent” mistreatment of a

⁴ In reaching this conclusion, the Court of Appeal relied on evidence of Mr. Parker’s enrollment in special education classes, his medical history, and Louisiana’s on-the-record decision not to pursue the death penalty because of its belief that Mr. Parker had an intellectual disability. Pet. App. A at 23 n.5; *see also* Resp. Br. at 6 (discussing evidence of Mr. Parker’s intellectual disability).

Louisiana announced its decision not to pursue the death penalty at a status conference on July 22, 2013. It is technically true that Louisiana did not test Mr. Parker, but as the prosecutor explained: “Our office did receive medical information that was provided by the defense. Upon us talking with one of our doctors, an expert, it is our belief that if the defendant was tested, that there is a strong possibility that he could come back with a mentally retarded, I guess, diagnosis; and, with that, the state, at this time, is putting the defense on notice that we have no intention to seek the death penalty.” Supp. A.R. 639.

child. La. R.S. § 14:93(A)(1). In its brief, Louisiana contends that Mr. Parker’s mistreatment of D.S. was intentional rather than negligent. Resp. Br. at 8–9.

The trial court already rejected Louisiana’s argument. First, in the process of acquitting Mr. Parker of first-degree murder, the court rejected the state’s theory that Mr. Parker intended to kill or inflict great bodily harm on the child:

The Court . . . cannot conclude that Randy Parker specifically intended to kill or inflict great bodily harm when he . . . attempted to discipline 23-month-old [D.S.] for not being potty trained. . . . The Court notes that Randy Parker was an active caregiver that night. He disciplined him. He cut his hair. He bathed him and fed him.

A.R. 615. Later, in the process of convicting Mr. Parker of second-degree murder on a felony murder theory, the court described his behavior as “reckless” and concluded that he “should have known” that his attempts to discipline the child would result in great bodily harm or death. A.R. 615–16. With this language, the trial court unequivocally rejected the state’s theory that Mr. Parker intentionally mistreated D.S.

The Court of Appeal later reviewed all of the evidence as part of its evaluation of Mr. Parker’s challenge to the sufficiency of the evidence. Pet. App. A at 2–11. It never concluded that Mr. Parker intentionally mistreated D.S., nor did it disturb any of the trial court’s conclusions regarding Mr. Parker’s *mens rea*. See Pet. App. A.

IV. *TISON* DID NOT INVOLVE AN INTELLECTUALLY DISABLED DEFENDANT WHO ACTED WITH A NEGLIGENT *MENS REA*

Louisiana insists that Mr. Parker’s Eighth Amendment claim “clearly” fails under *Tison v. Arizona*, 481 U.S. 137 (1987), Resp. Br. at 9–11, but *Tison* did not involve a defendant with an intellectual disability, nor did it involve a defendant who

acted with a negligent *mens rea*. See 481 U.S. at 157. Here the trial court concluded that the intellectually disabled Mr. Parker was guilty of felony murder because he “should have known” that his attempts to discipline D.S. would result in great bodily harm or death. A.R. 615–16.

Louisiana’s argument goes more to the merits of Mr. Parker’s proposed rule, but the argument fails in any event. *Tison* required the moral culpability that comes with “knowingly engaging in criminal activities known to carry a grave risk of death” 481 U.S. at 157. The opposite is true here, where the trial court convicted Mr. Parker for taking inappropriate action as a result of a cognitive impairment that prevented him from understanding the risks that a reasonable person would have foreseen.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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