

CAPITAL CASE

No. 17-8543

**IN THE
SUPREME COURT OF THE UNITED STATES**

PERVIS TYRONE PAYNE,

Petitioner,

vs.

STATE OF TENNESSEE

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE TENNESSEE COURT OF CRIMINAL APPEALS,
WESTERN DIVISION**

PETITIONER'S SECOND SUPPLEMENTAL BRIEF

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Pervis Payne has sought the proper application of *Hall v. Florida*, 572 U.S. ____ (2014) to his evidence of intellectual disability. The Tennessee courts, however, have refused to apply *Hall* to his case. Short of this Court granting plenary review, Payne has asked this Court to grant certiorari, vacate, and remand for further consideration in light of *Moore v. Texas*, 581 U.S. ____ (2017).

In *White v. Kentucky*, U.S. No. 17-9467, the petitioner has sought certiorari, maintaining that the Kentucky courts failed to properly apply *Hall v. Florida* and *Moore v. Texas* to his evidence of intellectual disability. *See* Pet. for Cert. in *White v. Kentucky*, O.T. 2017, No. 17-9467. In his petition (*Id.* at 24, 28), White has requested that this Court, at a minimum, grant certiorari, vacate, and remand for proper application of *Hall* and *Moore*.

On September 18, 2018, this Court called for the record in *White*. Given the call for the record in *White*, this Court should reschedule Pervis Payne's petition pending further review of *White* following receipt of the record. Should this Court then grant certiorari in *White*, this Court should either: (a) consolidate Payne's petition with *White*, or otherwise (b) hold Payne's petition pending a final disposition of *White*, and then afterwards grant certiorari, vacate, and remand for further consideration in light of *White*.

CONCLUSION

This Court should grant certiorari, vacate the judgment below, and remand for reconsideration in light of *Moore v. Texas*, 581 U.S. ____ (2017). Otherwise, this Court should grant certiorari to decide whether *Hall v. Florida*, 572 U.S. ____ (2014)

applies retroactively on collateral review. Otherwise, this Court should reschedule Payne's petition pending the consideration and disposition of *White v. Kentucky*, U.S. No. 17-9467, and if certiorari is granted in *White*, this Court should then grant certiorari, vacate, and remand for further proceedings in light of *White*.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this second supplemental brief was served via first-class mail upon Nicholas W. Spangler, Esq., Office of the Attorney General, P. O. Box 20207, Nashville, Tennessee 37202 this 20th day of September, 2018.

/s/ *Paul R. Bottei*