

DOCKET NO. 17-9153

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

VICTOR TONY JONES,
Petitioner

vs.

STATE OF FLORIDA,
Respondent.

REPLY BRIEF IN SUPPORT OF CERTIORARI
APPENDIX

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APPENDIX INDEX

- A. Report of Hyman Eisenstein, Ph.D., January 3, 2006, included in the record on appeal filed in the Florida Supreme Court in Case No. SC04-726.

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PATIENT'S NAME:	VICTOR TONY JONES
DATE OF BIRTH:	May 1, 1961
CHRONOLOGICAL AGE:	44 years
CIRCUIT COURT JUDGE:	The Honorable Victoria Platzer
CASE NUMBER:	F90-50143
DATES OF EVALUATION:	November 29, December 27, 2005
DATE OF REPORT:	January 3, 2006

REASON FOR REFERRAL:

Mr. Victor Tony Jones was referred by the Court for an evaluation. The purpose of the evaluation was to ascertain whether Mr. Jones meets the criteria for Mental Retardation.

BACKGROUND INFORMATION:

Family History:

Mr. Victor Tony Jones was born to Ms. Constance Laverne Adams and Mr. John Henry Jones. Siblings include Pamela, his oldest sister, Lionel Byron Jones, who was shot and killed by the police in 1988, Michael Mills, John Henry Mills, who died in a tractor accident, Valerie Johnson, who died of AIDS, Ellis Hicks, and Frank Mills.

Ms. Constance Laverne Jones was a chronic alcoholic and was unable to raise any of her birth children. Victor Tony Jones was sent to live with Ms. Mary Miller, his grandmothers' sister, in Bartow, Florida, shortly after his birth. She was raising her son, Carl Leon Miller, at that time. Carl was about four years older than Victor, and they became like brothers. Ms. Miller was described as a "sweet, loving women" who was very religious and was sad at having to send the children away.

Several years later Ms. Miller became ill and was unable to care for the children. Both boys were sent to live with Ms. Laura Long, another sister of Victor's grandmother.

Pamela, Victor's sister, also came to live with Ms. Long at this time. Victor remembers starting school shortly after coming to live with Ms. Long in Perrine, Florida.

Pamela Mills stated that Aunt Laura treated them like step-children, they were given many rules to follow, were punished severely for failure to comply, and received no love and caring.

Victor stated that Ms. Long was perfectionistic and very clean. She expected and demanded that everything be perfect, with beating as a consequence for noncompliance. Victor and his cousins referred to Ms. Long as "the wicked witch."

Ms. Laura Long had a son, Lawrence Brown, who was grown and out of the house when the three cousins, Victor, Pamela, and Carl, came to live with Ms. Long. Shortly after their arrival he returned home. Ms. Long was very punitive for even the smallest infraction done by the children. Aside from her own punishments, she often instructed her son to punish the children. Lawrence was extremely abusive towards the children. He would make them strip naked and whip them with a wet belt. His beatings were severe and frequent, often on a daily basis. Victor reported that during the beatings he would "tune out" and try thinking about his favorite TV show or about moving away, in order to survive the pain.

Ms. Laura Long and her son Lawrence were emotionally abusive, constantly putting Victor down and calling him "retarded and stupid." Victor stated "while doing my homework, Ms. Long would complain about my work and scream "stupid, stupid" and slap me on the head."

Lawrence began sexually abusing Pamela when she was six or seven years of age. The other children told Ms. Long, who denied it and refused to intervene. Pamela became pregnant with Lawrence's child at nine years of age, and Ms. Long continued to deny the abuse. Pamela stated that Victor tried to stop Lawrence from abusing her, so Lawrence hated Victor even more, and beat him more than the others.

Victor began running away from home at about age eight, to escape the abuse at Aunt Laura's house. He reported drinking very early on and beginning street drugs, mostly marijuana, at age 11. His drug abuse escalated, including qualudes, valium, and he overdosed at age 13, landing in the pediatric intensive care unit for several months.

Victor went to live with his mother in New York at age 11. Pamela reported that their mother continued to drink and was unable to care for the children. Pamela stated that she

prepared meals and took care of all Victor's needs during that time. Victor returned to Miami at 14.

Victor's cousin, Carl Leon Miller, stated that Victor was always slower than the other kids. He reported that Victor did not comprehend many things and things did not "sink in." In order for Victor to understand, you would have to explain things and show them to him. He reported that once Victor got to Junior High, he just could not do the work and stopped going to school.

Pamela reported that Victor was very slow in learning, and did not get things right until the 2nd or 3rd try. She reported that he had difficulty with his speech, stumbling over words. He had great difficulty with writing letters, and she would help him with assignments so as not to elicit Ms. Laura Long's wrath. She stated that Victor "couldn't remember things," and Aunt Laura forced them to memorize prayers, which he couldn't do. Pamela reported that Victor was a loner, and he did not communicate with others. He did not have street smarts, and he always needed to be cared for by others. Pamela feels that Victor was beaten and abused the worst of all the family members.

Educational History:

Victor Tony Jones attended Richmond Elementary for first grade. Records indicate that he obtained all C's except an A in Writing and a B in Physical Education. Second grade followed, with C's in all subjects except B's for English and Writing. No records were available for the next several years. Victor reported attending Gulfstream Elementary and Mays Elementary, as well. He stated that he does not know why his school was changed, however, he was way behind the other children in class and had significant problems with learning.

Pamela Mills reported that teachers would call the house to discuss Victor's problems. She reported that Aunt Laura would get very mad, beat him more, but never provided him with the necessary help.

Victor attended Cutler Ridge Junior High for seventh grade. He obtained C's in most subjects, with B's in English and Physical Education. He began eighth grade at the same school, but completed only the first quarter, with C's, B's, and F's. Shortly thereafter he was sent to the Florida School of Boys at Okeechobee, where he remained for two weeks before transfer to Pinellas House. No records were available for this treatment.

Victor Tony Jones was placed at the Florida School of Boys at Okeechobee in June 1976, and remained there for 2½ months. Upon his return to Miami, his records indicate a

change to Centennial Jr. High School, with poor attendance, failing grades, and withdrawal by November.

In May 1977, Victor was admitted to the Florida School of Boys at Okeechobee. He remained in treatment there for over ten months. No records were available for review. He returned to the Florida School of Boys in August 1978, remaining there for two weeks and was transferred to Here's Help Program in Miami.

When Victor went to New York to live with his mother, he attended P.S. 188 in Harlem. No records were available for review.

Victor was unable to complete Junior or Senior High School. He never obtained his G.E.D. degree.

Medical/Psychiatric History:

Little is known about Ms. Constance Laverne Adams' pregnancy with Victor, other than the fact that she was well known to be a chronic alcoholic, who did not decrease or curtail her drinking during pregnancy. Ms. Adams was always drunk and would pass out often. Children born to alcoholic mothers often have Fetal Alcohol Syndrome, which often leads to significant deficits in intellectual functioning. Victor was never cared for by his birth mother. No records were available with regard to the condition of his physical health in his early years.

Victor and other family members reported several incidents of head injuries in childhood. At age 6 Victor fell out of a mango tree and lost consciousness. He reportedly did not receive any medical attention. Several other accidents with head injuries were reported, however, no evaluations or treatment ensued.

Victor's first psychiatric admission was on May 7, 1975, age 14, to Jackson Memorial Hospital. He was admitted due to the frequency with which he ran away from home and difficulty getting along with his guardian. Medical records reported "patient has been evaluated in different institutions and structured environment-like youth homes and has been labeled as borderline mental retardation."

INTELLECTUAL EVALUATION RESULTS:

Mr. Victor Tony Jones was evaluated many times over the years. The following is a table of I.Q. test scores obtained:

	<u>Verbal I.Q.</u>	<u>Performance I.Q.</u>	<u>Full Scale I.Q.</u>
WAIS-R 4/19/91	76	69	72
WAIS-R 2/18/93	75	66	70
WAIS-III 3/22/99	70	70	67
WAIS-III 6/15/03	74	75	72
WAIS-III 5/3/05	76	78	75

Current findings demonstrate Borderline to Extremely Low intellectual functioning, with consistency over time. The I.Q. results meet the criteria for Mild Mental Retardation based on the DSM-IV-TR standards (pg 41) **"it is possible to diagnose Mental Retardation in individuals with I.Q. between 70 and 75 who exhibit significant deficits in adaptive functioning."**

Onset of the Mental Retardation must be prior to age 18. Therefore, additional testing was not completed at this time, rather, clinical interview with the defendant and other family members, who knew him prior to age 18, were useful in determining his early functioning. Completing a retrospective study on Mental Retardation, gathering evidence for deficits in adaptive functioning from reliable sources, with collateral data, interviews, medical records, and school records, was very helpful.

Adaptive functioning refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, socio-cultural background and community setting.

Mr. Victor Tony Jones meets the criteria of having significant deficits in adaptive functioning in the following areas:

Communication, he is described as "not verbal," "not articulate," "stumbling over words," "unable to comprehend," and a "slow learner."

- Functional Academic Skills, he is described as "retarded," "didn't have street smarts," "mentally slow," "needed special schooling," and "academic failure."
- Self Directions, he is described as "always needed me (sister) for help," "girlfriend took care of things for him." His girlfriend was more than 20 years older than Victor, and served as a mother/caregiver figure, he was unable to operate independently.
- Social/Interpersonal skills, he has been described as "a loner," "never involved with people," "he would show up and disappear."
- Health/safety, he did not care for himself, had numerous head injuries and medical concerns, which were not attended to.

SUMMARY & IMPRESSIONS

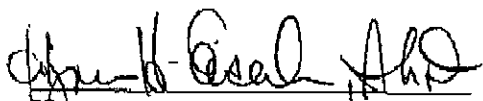
Mr. Victor Tony Jones intelligence scores have remained in the Borderline to Extremely Low range of intellectual functioning over several decades.

Victor has benefitted from the structure, focus, and rehabilitative aspects of imprisonment. Incarceration has spared Victor from having to deal with the stressors of independent living, and has kept him off the streets and alive.

Victor's adaptive functioning, or degree to which he was able to maintain himself independently, in many different spheres, was consistent with mild mental retardation.

Victor continues to be extremely concrete, slow and simplistic. His level of understanding and maturity remains at a pre-adolescent level. Victor has exhibited social withdrawal, isolation and mistrust. His limited basic skill level would have made it difficult for him to function independently and effectively as an adult in society.

It is my clinical opinion that Victor has always been in the Educable or Mild range of Mental Retardation.


Hyman H. Eisenstein, Ph.D.