

24-872 HAMM, COMMISSIONER AL DOC V. SMITH

DECISION BELOW: 2024 WL 4793028

LOWER COURT CASE NUMBER: 21-14519

QUESTION PRESENTED:

Like most States, Alabama requires that offenders prove an IQ of 70 or less to satisfy the intellectual-functioning prong of *Atkins v. Virginia*. This case was not close: Smith scored 75, 74, 72, 78, and 74 on five full-scale IQ tests. There is no way to conclude from these five numbers that Smith's true IQ is *likely* to be 70 or below. So the courts below required Smith to prove only that his IQ "*could be*" 70 and required the State to bring evidence "strong enough" to "foreclose" and "rule out the possibility" of intellectual disability. The first question presented is:

1. Whether, under a proper application of *Atkins*, a State can require a claimant to prove an IQ of 70 or less by a preponderance of the evidence.

Evaluating multiple IQ scores is "complicated," and "this Court has not specified how" to do it. In the State's view, five scores are more accurate than one, and there are ways to account for that fact. The courts below disagree. The district court relied on Smith's 72 ± 3 to find that his IQ "could be" 69. On remand, the Eleventh Circuit's "holistic approach" asked whether Smith had scores of "about" 75 or less. Counting four out of five scores between 72 and 75, the court found "consistent evidence" that Smith "may" qualify as mildly disabled. Thus, the court "followed the law's requirement," in its view, to "move on" to Smith's adaptive deficits. The second question presented is:

2. Whether courts evaluating multiple IQ scores must find that every valid score of "about" 75 or less supports an *Atkins* claim.

THE PETITION FOR A WRIT OF CERTIORARI IS GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER AND HOW COURTS MAY CONSIDER THE CUMULATIVE EFFECT OF MULTIPLE IQ SCORES IN ASSESSING AN ATKINS CLAIM.

CERT. GRANTED 6/6/2025