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Doctors Who Evaluated Death Row Prisoner for Georgia Now Say that Warren Hill has Mental Retardation

February 19th Execution Date Must Be Stopped, Say Advocates for People With Intellectual Disability

(ATLANTA, GEORGIA; Thursday, February 14) --- Affidavits from three doctors who had previously testified on behalf of the state regarding Warren Hill were released today affirming that Mr. Hill has mental retardation. In December 2000, at the request of the Georgia Attorney General's Office, the doctors had examined Mr. Hill and testified at an evidentiary hearing that Mr. Hill did not fit the criteria for mental retardation, instead diagnosing him with borderline intellectual functioning. The doctors, Dr. Donald Harris, Dr. Thomas Sachy and Dr. James Gary Carter, now concur with all other doctors who have examined Mr. Hill and now find that Mr. Hill has mild mental retardation, placing Mr. Hill in the category of citizens protected from capital punishment by the 2002 United States Supreme Court decision *Atkins v. Virginia*.

In their affidavit testimony (links: Harris; Sachy; Carter), the doctors report that their initial evaluation of Mr. Hill was "extremely and unusually rushed" and "not conducive to an accurate assessment of Mr. Hill's condition" (Carter p.2, 7) and that advances in psychiatric understanding of intellectual disability now convince them that their initial finding was in error.

In the words of Dr. Sachy, "I have vastly greater experience as a psychiatrist than I did in 2000, and I have access to better science pertaining to the issues in Mr. Hill's case." (Sachy p.6)

Dr. Harris adds, "We in the clinical community now better understand that persons with mild mental retardation are capable of such things as holding a job, working under close supervision, buying and driving a car, and so forth. It is precisely because significant deficits in cognition, judgment and impulse control can be masked by superficial functionality in cases of mild mental retardation that such persons may sometimes not be identified in court proceedings as being intellectually disabled. I believe this has happened in Mr. Hill's case." (Harris p.10).

Mr. Hill faces execution on February 19, 2013 unless the U. S. Supreme Court intervenes. Attorneys for Mr. Hill currently have a motion for a stay of execution and a petition of *certiorari* pending with the U.S. Supreme Court.

In 2002, the same year the Supreme Court decided *Atkins*, Judge John Allen of the Superior Court of Butts County, GA found Mr. Hill to have an IQ of approximately 70 beyond a reasonable doubt and to fulfill the overall criteria (including impairments in adaptive skills) for mental retardation by a preponderance of the evidence. Because Drs. Sachy, Harris and Carter had opined at the time that Mr. Hill did not quite meet the criteria for mental retardation, however, Judge Allen could not find that Mr. Hill could prove he had the syndrome beyond a reasonable doubt.

On July 19, 2012 days before Mr. Hill's scheduled execution, Judge Wilson reaffirmed the Court's previous findings, stating that: "The Court finds that this Court's previous finding in *Hill v. Head*, Butts Co. Case No. 94-V-216, that Mr. Hill has an I.Q. of 70 beyond a reasonable doubt and meets the overall criteria for mental retardation by a preponderance of the evidence, is justified by the evidence in this case."

Judge Wilson also found that despite the U.S. Supreme Court's ruling prohibiting the execution of the "mentally retarded" (now known as people with intellectual disability), Mr. Hill did not meet Georgia's "beyond a reasonable doubt" -- the strictest state standard in the nation.

Now, however, there is complete consensus on the part of all experts who have evaluated Mr. Hill that he is in fact mentally retarded. His execution threatens to be a true miscarriage of justice and a violation of the Constitution.

Georgia's Supreme Court previously stayed Mr. Hill's execution date in July 2012 due to issues related to the state's lethal injection protocol; however, on the same day, the court denied Mr. Hill's petition on the mental retardation issues. On February 4, 2013, Georgia's Supreme Court resolved the lethal injection issues and lifted the stay on Mr. Hill's execution. The Georgia Board of Pardons and Parole previously denied clemency and has declined to give Mr. Hill another audience.

In her dissent to the majority finding by the Georgia Supreme Court that the reasonable doubt standard was constitutional, Justice Leah Sears wrote, "Despite the federal ban on executing the mentally retarded, Georgia's statute, and the majority decision upholding it, do not prohibit the state from executing mentally retarded people. To the contrary, the State may still execute people who are in all probability mentally retarded. The State may execute people who are more than likely mentally retarded. The State may even execute people who are almost certainly mentally retarded." (Head v. Hill, 277 Ga. 255, 274 (2003).)

Today's *New York Times* features an editorial ("A Final Plea for Mercy") urging the court to protect Mr. Hill from Georgia's standard, calling it "far too heavy a burden of proof."

This week, *The Huffington Post* also published "The Supreme Court Must Stop the Execution of Warren Hill" by Eric Jacobsen, Executive Director of the Georgia Council on Developmental Disabilities. *The Huffington Post* previously published a piece by Margaret Nygren, the

Executive Director and CEO of the American Association on Intellectual and Developmental Disabilities in support of reducing Mr. Hill's sentence.

Numerous others have called for the execution of Mr. Hill to be stopped. Christof Heyns, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, wrote an opinion piece in *The Guardian* and President Jimmy Carter and Rosalyn Carter have called for a commutation of Mr. Hill's death sentence to life without parole, as have many others. Several jurors who sat on Mr. Hill's original jury have also stated under oath that they believe that life without parole is the appropriate sentence in this case. It was not offered to them as an option at trial in 1991.

Notably, the family of the victim does not wish to see Mr. Hill executed, supporting commuting Mr. Hill's death sentence to life without the possibility of parole. In the words of a family spokesperson, "I and my family feel strongly that persons with any kind of significant mental disabilities should not be put to death."

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