No. 16-7685

IN THE SUPREME COURT OF THE UNITED STATES

TAURUS CARROLL, Petitioner,

v.

STATE OF ALABAMA, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE ALABAMA COURT OF CRIMINAL APPEALS

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

BENJAMIN W. MAXYMUK
379 Felder Avenue
Montgomery, AL 36104
PH: (334) 652-2531
benjamin.maxymuk@gmail.com

Counsel of Record for Petitioner Taurus Carroll

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Sup. Ct. R. 10 1

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Since the filing of Mr. Carroll's initial Petition for Certiorari and the State of Alabama's Brief in Opposition, this Court issued its decision in Moore v. Texas, reaffirming that "adjudications of intellectual disability should be 'informed by views of medical experts,'" Moore v. Texas, No. 15-797, 2017 WL 1136278, at *4 (U.S. Mar. 28, 2017), and holding that the Texas court's application of outdated medical standards in determining that the defendant was not intellectually disabled, and therefore exempt from execution, violated the Eighth Amendment protections established in Atkins v. Virginia, 536 U.S. 304 (2002).

As in Moore, here, both the circuit court and the Alabama Court of Criminal Appeals relied on the Alabama Supreme Court's opinion in Ex parte Perkins, 851 So. 2d 453 (Ala. 2002), and applied outdated medical standards to determine that Mr. Carroll is not intellectually disabled. Carroll v. State, No. CR-12-0599, 2015 WL 4876584 (Ala. Crim. App. Aug. 14, 2015). To ensure that the lower courts' "unfettered discretion" does not render Atkins a "nullity," Moore, 2017 WL 1136278, at *14, it is appropriate for this Court to grant certiorari pursuant to Supreme Court Rule 10(c) and remand this case back to the lower court for further consideration in light of Moore v. Texas. See Sup. Ct. R. 10(c) (listing, as basis for granting certiorari review, that "a state court . . . has decided an important question federal question in a way that conflicts with relevant decisions of this

Court").

ARGUMENT

I. MR. CARROLL IS ENTITLED TO RELIEF PURSUANT TO MOORE V. TEXAS.

In Moore v. Texas, this Court determined that the factors the Texas Court of Criminal Appeals applied to evaluate the defendant's Atkins claim of intellectual disability, based on superseded medical standards, created an unacceptable risk that a person with intellectual disabilities would be executed in violation of the Eighth Amendment. Moore v. Texas, No. 15-797, 2017 WL 1136278, at *2 (U.S. Mar. 28, 2017). As in Moore, in the present case, the lower courts relied on similarly outdated medical standards in employing a strict IQ cutoff score and "overemphasiz[ing]" Mr. Carroll's "perceived adaptive strengths," Moore, 2017 WL 1136278, at *11, instead of appropriately considering the significant evidence of Mr. Carroll's adaptive deficits. Given the significant evidence that Mr. Carroll is intellectually disabled, and therefore exempt from execution, it is appropriate for this Court to grant Mr. Carroll's petition for writ of certiorari, vacate and remand to the lower courts for further consideration pursuant to this Court's recent opinion in Moore v. Texas.

A. The Use of a Strict IQ Cutoff Score Conflicts With Current Medical Standards.

In this case, the lower court relied on Ex Parte Perkins, 851 So. 2d 453 (Ala. 2002), to hold that "Carroll's full scale IQ score of 71 places him outside of the Alabama Supreme Court's definition of mentally retarded." Carroll v. State, No. CR-12-0599, 2015 WL

4876584, at *8 (Ala. Crim. App. Aug. 14, 2015); see also, Resp't's Br. Opp'n 15 ("A capital offender must prove that he or she satisfies all three elements of the intellectual disability that the Supreme Court of Alabama announced in Perkins to establish that he or she is intellectually disabled").

In Moore, however, this Court reaffirmed its earlier directive in Hall v. Florida, 134 S. Ct. 1986 (2014), that where, as here, the IQ score is "close to, but above, 70, courts must account for the test's 'standard error of measurement.'" Moore, 2017 WL 1136278, at *2. Instead of accounting for the standard error of measurement ("SEM") by placing the IQ score within a range of scores, the lower courts in this case instead required Mr. Carroll to "establish that he was at the lower end of the range," a position the State of Alabama now asserts in this Court. See Resp't's Br. Opp'n 22 ("Carroll did not meet his burden to establish that it is more likely than not that his IQ score is 70 or below based on the mere possibility that his true IQ falls at the low end of the standard error of measurement."). But as this Court noted in Hall, "the professionals who design, administer, and interpret IQ tests have agreed, for years now, that IQ test scores should be read not as a single fixed number but as a range," Hall,134 S. Ct. at 1995; see also Moore, 2017 WL 1136278, at *10 ("a test's "standard error of measurement 'reflects the reality that an individual's intellectual functioning cannot be reduced to a single numerical score.'"); Hall,134 S. Ct. at 2001

("[I]ntellectual disability is a condition, not a number.").[1] As such, the lower courts' determination to the contrary conflicts with current medical standards and this Court's decisions in Moore and Hall.

B. Overemphasizing Adaptive Strengths Violates Current Medical Standards.

As in Moore, the consideration below of Mr. Carroll's adaptive functioning "deviate[s] from prevailing clinical standards," by "overemphasiz[ing] Mr. [Carroll]'s perceived adaptive strengths." Moore, 2017 WL 1136278, at *11. In this Court, the State similarly relies on these perceived strengths – which in many ways mirror the Briseno factors rejected by this Court in Moore – to argue that "Carroll cannot prove the second prong of the mental retardation definition." Resp't's Br. Opp'n 23.

For example, the State argues that Mr. Carroll "has no problem communicating with others and has no problems following directions" as evidence of an adaptive strength. Resp't's Br. Opp'n 23. This mirrors the Briseno factor about whether a defendant can "respond coherently, rationally, and on point to oral or written questions." Moore, 2017 WL 1136278, at *6, n.6. Similarly, the State of Alabama argues that Mr. Carroll's "behavior

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[1]In contrast to the lower courts' opinions, and the State's argument to this Court, current medical standards support the application of the "Flynn effect" to describe "overly high scores due to out-of-date test norms." American Psychiatric Association, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 37 (Am. Psychiatric Ass'n 5th ed. 2013) (DSM-V). In this case, Dr. Shaffer testified that the "Flynn Effect" reduced Mr. Carroll's IQ Score to an IQ score of 69.5. (R. 123.)

before the crime is not consistent with intellectual disability because of the planning aspect of the crime and because his actions after the crime are not consistent with mental retardation," and cites Mr. Carroll's decision to leave the scene of the crime, discard the knife he used, and wash the blood off of his hands. Resp't's Br. Opp'n 23. This factor aligns closely with another Briseno factor this Court highlighted in Moore regarding whether an individual could "hide facts or lie effectively in his own or others' interests." Moore, 2017 WL 1136278, at *6, n.6. Finally, the State argues that evidence of adaptive functioning includes Mr. Carroll's ability to "make decisions and to follow through on the decisions he makes." Resp't's Br. Opp'n 23. Again, this tracks closely with the second Briseno factor cited in Moore: whether an individual has "formulated plans and carried them through or is his conduct impulsive?" Moore, 2017 WL 1136278, at *6, n.6.[2]

Moore makes clear that by relying on such evidence, the lower courts and the State have "deviated from prevailing clinical standards," Moore, 2017 WL 1136278, at *11, because they overemphasized Mr. Carroll's perceived adaptive strengths "when the medical community focuses the adaptive functioning inquiry on adaptive deficits." Id. As with the "wholly nonclinical Briseno factors," Moore, 2017 WL 1136278, at *14, the State's evidence

[2]Additionally, the State and the lower court routinely looked to behaviors Mr. Carroll has exhibited while incarcerated as evidence that he lacks the adaptive deficits necessary to find him intellectually disabled. For instance, both the State and the lower court emphasized Mr. Carroll's reputation as a good kitchen worker as evidence that he was not intellectually disabled. See Carroll, 2015 WL 4876584, at *7; Resp't's Br. Opp'n 23. However, this Court in Moore warned against placing too much emphasis on the defendant's "improved behavior in prison" because "clinicians caution against reliance on adaptive strengths developed in controlled settings." Moore, 2017 WL 1136278, at *11.

only serves to "advance lay perceptions of intellectual disability," Moore, 2017 WL 1136278, at *13, stereotypes which the medical community has "endeavored to counter." Id.

Indeed, the evidence of Mr. Carroll's adaptive deficits is significant. Dr. Shaffer testified that he conducted the Halstead Reitan Neuropsychological Test Battery and Mr. Carroll scored in the impaired range on nine of the fourteen measures on this exam, and was below average on all the other measures but one, for which he scored average. (R. 111.) Additionally, Mr. Carroll scored in the impaired range on four other neurological tests. (R. 112.) Additionally, when Dr. Shaffer administered the Vineland Adaptive Behavior Scales (Vineland-2) and the Adaptive Behavior Assessment System (ABAS-2) on Mr. Carroll, he scored in the lowest percentile on both the Vineland-2 and ABAS-2. (R. 119.) Specifically, Mr. Carroll had serious adaptive functioning deficiencies in communication, self-care, home living, social/interpersonal skills, self-direction, functional academic skills, and health and safety, or seven out of the ten areas evaluated. (R. 119-20.) Mr. Carroll scored in the first percentile in those seven deficient areas; 99 out of 100 adults living in the U.S. would score better than he did. (R. 119, 789: "A seven-year-old child would have the same level of independent skills, independent functioning in preparing food, keeping track of his clothing, keeping up with himself, and that kind of thing.").

C. The Adaptive Deficits That Mr. Carroll Suffers From Manifested During His Formative Years.

While acknowledging that the evidence "showed that Carroll suffered from significant deficits in adaptive functioning during the developmental period," the State nevertheless

relies on IQ tests given to Mr. Carroll when he was 7 and 10 years old to argue that "these scores place Carroll well above intellectually disabled." Resp't's Br. Opp'n 26. However, the record indicates these tests were administered to Mr. Carroll in a group setting. (R. 896.) Current medical standards make clear that invalid scores often result from tests given in a group setting. DSM-V at 37. Furthermore, both of these IQ scores were obtained prior to Mr. Carroll suffering serious head trauma as a result of an incident when he was 14, an injury that "changed [Mr. Carroll] in a very big way." (R. 869-70.)

Indeed, the trauma that Mr. Carroll survived throughout his youth provides ample evidence that he suffered from adaptive deficits prior to turning 18 years old. As this Court noted in Moore, a "record of academic failure, along with the childhood abuse and suffering," are "traumatic experiences" that "count in the medical community as 'risk factors' for intellectual disability." Moore, 2017 WL 1136278, at *12. These same risk factors existed for Mr. Carroll during his formative years. For instance, the evidence establishes that Mr. Carroll was anally raped when he was two years old. (R. 59.) Mr. Carroll was also beaten so severely by his mother with belts and extension cords that he often chose not to go to school out of embarrassment. (R. 58, R. 795.) Additionally, Mr. Carroll struggled in school during his youth. He twice failed both the first and eighth grades. (R. 56.) He was placed in special education and given one-on-one teachers who tried to help, but he still had great trouble learning. (R. 56.)

CONCLUSION

For the foregoing reasons, Petitioner prays that this Court grant certiorari, vacate and remand Mr. Carroll's case to the Alabama Court of Criminal Appeals for further consideration in light of Moore v. Texas.

Respectfully submitted,

BENJAMIN W. MAXYMUK
379 Felder Avenue
Montgomery, AL 36104
PH: (334) 652-2531
benjamin.maxymuk@gmail.com

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Counsel of Record for Petitioner Taurus Carroll