

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

FILED
DEC 30 2019
Clerk of the Appellate Courts
Rec'd By _____

STATE OF TENNESSEE,)	
)	
Movant,)	No. M2000-00641-SC-DPE-CD
)	
v.)	DAVIDSON COUNTY
)	CRIMINAL COURT
BYRON BLACK,)	No. 88-W-1479
)	
Defendant.)	

**SYLLABUS OF
RESPONSE IN OPPOSITION TO MOTION TO SET
EXECUTION DATE**

Comes now Byron Black, through counsel, and submits this syllabus of his contemporaneously filed Response, pursuant to Tennessee Supreme Court Rule 12.4(C), and as his Response exceeds 50-pages in length.

I. Introduction.

Mr. Black is an intellectually disabled, seriously mentally ill man with significant and progressive physical infirmities.

II. Mr. Black is incompetent to be executed. This case should be remanded for a full and fair evidentiary hearing.

It is unconstitutional to execute a person who has lost their sanity. Expert proof from no fewer than six experts establishes that Mr. Black is intellectually disabled and seriously mentally ill. His attorneys describes delusional and irrational behavior. He lacks a rational understanding, and is incompetent to be executed.

This Court should remand for appropriate proceedings in the trial court. However, the time-frame of *Van Tran* should be loosened, so that experts and lawyers will have adequate time to fully and competently evaluate Mr. Black, and prepare helpful reports and pleadings for the trial court.

III. Mr. Black is intellectually disabled and excluded from the death penalty. His execution would be illegal. This Court should deny the motion to set execution date and remand the case to the Davidson County Criminal Court for a full and fair adjudication of his *Atkins v. Virginia* claim in accordance with its inherent authority.

Six experts conclude that Mr. Black is intellectually disabled. His prior attorneys vividly describe evidence of this disability, and of his inability to comprehend the proceedings. He is categorically immune from execution. The prior Court of Criminal Appeals decision denying Mr. Black relief relied on incorrect, and since repudiated legal standards, including the requirement that a prisoner must have been given a test, prior to age 18, on which they scored 70 or below. This Court should

remand to the trial court for a hearing using the correct legal standards. Alternatively, to avoid unconstitutionally executing an intellectually disabled person, this Court should decline to set an execution date.

IV. Execution of Mr. Black violates the Eighth and Fourteenth Amendments to the United States Constitution and Article 1, Section 16 of the Tennessee Constitution, because he is seriously mentally ill.

Mr. Black is seriously mentally ill. The expert proof, and observations of counsel make clear that he suffers from delusions, and lacks a rational understanding of his legal situation. Prisoners like Mr. Black should be categorically exempt from execution. The reasons set forth in *Roper v. Simmons* for excluding juveniles from execution apply with even greater force to the seriously mentally ill.

V. The Death Penalty Is Racist.

This section discusses our nation's unfortunate and challenging history of racial bias, and, in particular, bias in the justice system, and why this history counsels against continuing to impose the death penalty on any person.

VI. Tennessee is out of step with the evolving standards of decency that have led most of the country to stop executing its citizens and which render Tennessee's death penalty unconstitutional.


This section discusses our nation's evolving attitude towards execution as an (un)ethical, (im)moral, (in)effective and (un)just punishment. Tennessee is a radical outlier that is increasing executions (if not death sentences, which Tennessee juries are rarely imposing), while the vast majority of our nation is ending the death penalty entirely.

VII. Conclusion.

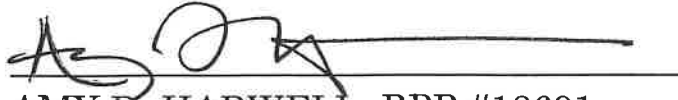
Mr. Black respectfully requests that this Court issue a Certificate of Commutation, as significant extenuating circumstances are set-forth in this Response. Mr. Black is dying of natural causes. He is weak and infirm. He was always intellectually disabled and seriously mentally ill. He is happy and at peace, but he lacks all rational understanding of his potentially impending execution.

No execution date should be set, and this case should be remanded for appropriate proceedings in the trial court.

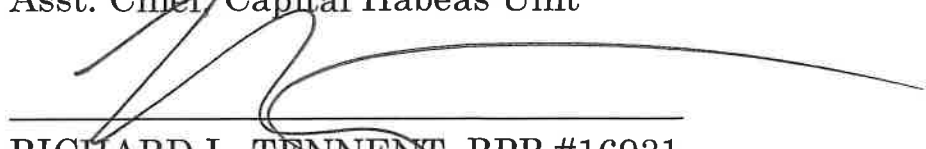
Respectfully submitted this 30th day of December, 2019.



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CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that a true and correct copy of the foregoing Syllabus of the Response in Opposition to Request to Set Execution Date was served via email and United States Mail to opposing counsel, Amy Tarkington, Associate Solicitor General, P.O. Box 20207, Nashville, Tennessee, 37202.

BY: 

Kelley J. Henry