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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Case No. 2018-CP-43-01025

BOBBY WAYNE STONE,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

NOTICE OF APPEAL

Pursuant to Rule 243, SCACR, the State appeals the Order Granting Post-Conviction Relief Pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), signed by the Honorable William P. Keesley on November 12, 2025, and filed with the Sumter County Clerk on November 17, 2025; and the Order on State's Motion to Alter or Amend, signed by Judge Keesley on December 22, 2025, and filed December 30, 2025. The State received written notice of the court's initial order on November 13, 2025, and timely served a Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(E) on November 24, 2025. The State received notice of Judge Keesley's order on the Rule 59(e) motion on December 22, 2025. *See* Rule 243(a) ("A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party

for a writ of certiorari, according to the procedure set forth in this Rule."). Opposing counsel is being served with this notice.

Respectfully Submitted,

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January 20, 2026

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
Bobby Wayne Stone, #5051,	)	
Applicant,	)	C/A No. 2018CP4301025
	)	
v.	)	
	)	**ORDER ON STATE'S MOTION TO**
State of South Carolina,	)	**ALTER OR AMEND**
Respondent.	)	
	)	

The State's motion to alter or amend the order finding that the Applicant suffers from intellectual disability and is entitled to relief under *Atkins*[1] is respectfully denied. The parties were notified that the court would decide the motion on written submissions under Rule 59(f), SCRCP. Having reviewed those materials, the logic and reasoning set forth in the response filed on behalf of the Applicant is adopted.

The State's motion was based on three grounds. The first is that the court erred in using the Flynn Effect to lower the Applicant's IQ scores. The court fully considered that issue in making its prior ruling, and the prior order expressed some concern about the underlying premise of the Flynn Effect. Nonetheless, the response explains in detail why this evidence was utilized as part of the court's ruling, and that reasoning is reinstated and adopted. The second assertion of error is that the court failed to give proper weight to "consistent IQ scores that largely fall outside the range" of intellectual disability. Again, the court considered all the evidence and, after reconsideration, adopts the reasoning set forth in the Applicant's response. The third assertion of

[1] *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 251 L.Ed.2d 335 (2002)

error is that *Atkins* should be reconsidered and clarified. The court followed what it believed to be applicable precedent.

As expected, the State's arguments are well stated and reflect considerable knowledge of the issues. However, the Applicant's response is equally impressive and addresses the first two objections in detail. The Applicant's arguments in opposition to the motion are found to be persuasive. As for revisiting *Atkins*, this court believes that precedent is binding at this point and has attempted to follow it in determining the findings and conclusions that were reached.

The extreme gravity and horrendous impact of Mr. Stone's inexcusable murder of a law enforcement officer who was acting in performance of his duties are not lost upon the court. Family and friends of the victim were present throughout the process after years of delays, and the court is mindful that Sergeant Charlie Kubala was more than an officer to them and many others. The determinations made are those which this court believes to be required under the law.

#2 THERFORE, IT IS ORDERED that the State's motion to alter or amend is respectfully denied.

AND IT IS SO ORDERED.

William P. Keesley
Circuit Court Judge

December 22, 2025

STATE OF SOUTH CAROLINA COUNTY OF SUMTER Bobby Wayne Stone, #5051, *Applicant*, v. State of South Carolina, *Respondent*.	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT C/A No. 2018-CP-43-1025 **ORDER GRANTING POST-CONVICTION RELIEF PURSUANT TO *ATKINS v. VIRGINIA*, 536 U.S. 304 (2002)**

I. INTRODUCTION

In this post-conviction relief ("PCR") action, Bobby Wayne Stone ("Stone" or "Applicant"), a death sentenced inmate, alleges that he is a person with intellectually disability and his death sentence violates the Eighth Amendment to the United States Constitution pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). This Court held an evidentiary hearing on the issue of Applicant's intellectual disability on July 30-31, 2024. At the hearing, both parties presented evidence and post-hearing briefs. A decision was entered in a memorandum order, with Applicant's counsel instructed to submit a more detailed proposed order. The State then raised certain objections to the proposed order. After careful review of the totality of the evidence, this Court finds that Applicant has satisfied his burden of proof and established by a preponderance of the evidence that he is a person with intellectual disability as defined under South Carolina law and for the purposes of the application of *Atkins* and *Franklin*. Accordingly, Applicant's death sentence is vacated pursuant to *Atkins* and *Franklin*.

WPM #1

II. RELEVANT PROCEDURAL HISTORY

Applicant was convicted of murder, burglary, and possession of a weapon during a violent crime. He was sentenced to death in 1997 for the murder of Sergeant Charlie Kubala, a Sumter County police officer. On direct appeal, the South Carolina Supreme Court reversed the death

sentence and remanded for resentencing. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002). Applicant was sentenced to death again on February 27, 2005, and his resentencing was affirmed on direct appeal. *State v. Stone*, 376 S.C. 32, 655 S.E.2d 487 (2008). Stone filed a PCR application in 2008, which was denied. *Stone v. State*, 419 S.C. 370, 798 S.E.2d 561 (2017).

On March 31, 2017, Stone moved the United States District Court for the District of South Carolina for a stay of execution so he could pursue a petition for writ of habeas corpus. *Stone v. Stirling*, C/A N0. 2:17-cv-01221-MGL-MGB. On April 10, 2017, the District Court granted the stay of execution. Stone filed a petition for writ of habeas corpus on November 20, 2017, and thereafter amended his petition. The amended petition included a claim for relief pursuant to *Atkins*. The District Court stayed the federal proceedings on September 4, 2018, to allow Stone to first present his Eighth Amendment *Atkins* claim to the state courts.

On June 5, 2018, Applicant filed this PCR application. Applicant raised several claims for relief related to intellectual disability, including a claim that he is a person with intellectual disability, and therefore is ineligible for the death penalty pursuant to *Atkins* and *Franklin*. On July 5, 2018, the State served a Return and Motion to Dismiss ("Return"). The pleading moved

> to dismiss this action because it is barred by the statute of limitations and it is successive to the prior post-conviction relief action Applicant filed on April 9, 2008. Further, Applicant's claim in ground 10 and 11(a) is not a cognizable claim that can be raised in post-conviction relief.

Return, p. 1. Ground 10 and 11(a) alleged Stone's "death sentence violates the Eighth Amendment" because of his intellectual disability. PCR Application, p. 2. On July 25, 2018, Stone responded to the State's motion to dismiss. Also on July 25, 2018, Stone amended his PCR application. The State served its Return to Amended Application and Motion to Dismiss on August 24, 2018, which renewed the same grounds for dismissal.

On January 16, 2019, the Honorable Michael G. Nettles convened a hearing on the State's motion to dismiss this action. On February 20, 2019, Judge Nettles granted, in part, and denied, in

part, the State's motion to dismiss. Judge Nettles concluded Stone could proceed on his *Atkins* claim (Grounds 10 and 11(a)). Order, Feb. 20, 2019, pp. 5-10. Judge Nettles, however, dismissed Stone's other claims. *Id.*, pp. 10-15.[1]

On July 30-31, 2024, an evidentiary hearing was held on the sole issue of whether Stone is a person with intellectual disability. At the hearing, Applicant presented two expert witnesses: Dr. Sara Boyd,[2] Applicant's evaluator, and Dr. Alicia Hall,[3] an evaluator from DDSN appointed

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[1] On November 28, 2018, the Supreme Court of South Carolina assigned Judge Nettles jurisdiction to preside over this PCR action. The Supreme Court subsequently assigned the undersigned jurisdiction over this PCR action on May 9, 2019. Judge Nettles resolved the State's motion to dismiss while he had jurisdiction over this action. The undersigned reviewed Judge Nettles order dated February 20, 2019, and concurs with its reasoning. Additionally, other courts have consistently allowed *Atkins* claims to be presented in successive PCR actions, even in cases which were pending on or had completed federal habeas review. *See, e.g., E.g.*, Order, *Terry v. State*, No. 1997-006197 (S.C. Apr. 6, 2022); *Woods v. State*, No. 2019-001713, 2019 WL 6898088 (S.C. Dec. 18, 2019); Order Denying Motion to Dismiss, *Elmore v. State*, No. 2005-CP-24-1205 (S.C. Ct. Comm. Pleas June 18, 2007); Third 120 Day Status Report, *Aleksey v. State*, No. 2015-CP-38-00764 (S.C. Ct. Comm. Pleas June 7, 2017); Order, *Bryant v. South Carolina*, 2016-CP-43-828 (S.C. Ct. Comm. Pleas July 13, 2016); Order Denying Respondent's Motion to Dismiss, *Terry v. State*, 2022-CP-32-00924 (S.C. Ct. Comm. Pleas Dec. 8, 2022).

WPC #3

[2] Dr. Boyd has a PhD in Clinical Psychology and is board certified in both clinical and forensic psychology. She is a member of the American Psychological Association and the American Association on Intellectual and Developmental Disabilities ("AAIDD"). She has extensive experience working with people with intellectual disability and other developmental disabilities. Dr. Boyd has worked as a caregiver for people with developmental disabilities who require institutionalized support and has conducted over 500 evaluations of whether a person meets the criteria for intellectual disability. She is faculty at the University of Virginia's Institute of Law, Psychiatry, and Public Policy, where she conducts forensic evaluations for the Virginia court system, including evaluations of whether someone is a person with intellectual disability. Dr. Boyd has published extensively on intellectual and developmental disabilities and was selected by Virginia's Department of Behavioral Health to consult with the department about the appropriateness of IQ measures for diagnosing intellectual disability. App. Ex. 1.

[3] Dr. Hall has a PhD in Clinical Psychology with specialized training in forensics. She works as a forensic psychologist at the South Carolina Department of Disabilities and Special Needs ("DDSN"), where she focuses on neurodevelopmental disorders and forensic psychology. Dr. Hall has been at DDSN since 2014 and conducted the Court ordered *Atkins* evaluation in this case. At the time of the hearing in this case, the state agency that employs Dr. Hall was named DDSN, but since the hearing concluded, the agency's name has been changed to the Office of Intellectual and Developmental Disabilities at the South Carolina Department of Behavioral Health and Developmental Disabilities ("BHDD-OIDD"). Dr. Hall has conducted over 1000 forensic evaluations while working at DDSN, including at least nine evaluations for *Atkins* proceedings.

by this Court. Dr. Boyd was qualified as an expert in psychology and intellectual disability. Hrg. at 13. Dr. Hall was qualified as an expert in forensic psychology with a specialty in assessing and diagnosing intellectual disability. Hrg. at 159. Respondent offered the testimony of three itnesses, Dr. Michael Vitacco,[4] Dr. Kimberly Kruse,[5] and Elaine Harris (one of Applicant's school psychologists).[6] Elaine Harris is referred to as "one of Applicant's former teachers."

At the close of the hearing, both Applicant and Respondent requested the ability to obtain the hearing transcript and submit their closing arguments to the Court in post-hearing briefing, which the Court permitted. Hrg. at 344. Stone submitted his post-hearing brief on February 4,

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She has also completed continuing education specific to conducting *Atkins* evaluations. Before working at DDSN, Dr. Hall was the chief psychologist at the University of South Carolina's School of Medicine in the Department of Neuropsychiatry and Behavioral Sciences and the chief psychologist at the Developmental Disorders Clinic for the South Carolina Department of Mental Health. App. Ex. 4.

[4] Dr. Vitacco has a PhD in clinical psychology. He is a professor at Augusta University where he teaches in the schools of Public Health and the School of Medicine's department of Psychiatry and Health Behavior. Dr. Vitacco is also an adjunct professor in clinical psychology for St. John's University and previously taught at Cardinal Stritch University. He is Board certified in forensic psychology and has a forensic consulting practice alongside his teaching responsibilities. He has authored publications about forensic psychology and social media, forensic psychology and mental health law, and the insanity defense. Resp. Ex.1.

[5] Dr. Kruse has a PhD in clinical psychology and did a post-doctoral fellowship in neuropsychology. She is a neuropsychologist at Prisma Health where, as part of her job responsibilities, she supervises residents for the University of South Carolina School of Medicine in neuropsychiatry and behavioral medicine. Dr. Kruse is the team psychologist for sports teams at the University of South Carolina and contracts with the Department of Veterans Affairs to do compensation and pension examinations. Resp. Ex. 2. Dr. Kruse testified that she has done psychoeducational exams for the Department of Juvenile Justice, "which did involve intellectual functioning and learning disorder." (Tr. 303). Additionally, Dr. Kruse testified to having conducted 500-1,000 IQ tests. (Tr. 304).

[6] Elaine Harris is a retired school psychologist from the Sumter County School District. Hrg. at 330. Ms. Harris testified about her recollections of school evaluations for special education services in the 1970s when Applicant was a student in the Sumter County School District. Hrg. at 332–341.

2025, the State responded on April 7, 2025,[7] and Stone replied on May 2, 2025. The Court has considered the full record, including the testimony and exhibits presented at the hearing, and concludes, for the reasons set forth below, that Stone has proved, by a preponderance of the evidence, that he is a person with intellectual disability whose execution is barred by the Eighth Amendment.

III. RELEVANT LEGAL PRINCIPLES

In *Atkins v. Virginia*, the United States Supreme Court found that the Eighth Amendment to the United States Constitution prohibits the execution of people with intellectual disability.[8] 536 U.S. at 321. In doing so, the Court established a categorical exemption to the death penalty if a person is determined to be intellectually disabled. This categorical exemption recognizes that, as a class, persons with intellectual disability are less morally culpable, and therefore, less deserving of the death penalty. This is because intellectual disability impairs a person's ability to make "calculated judgments," to "control impulses," and "to abstract from mistakes and learn from experience." *Atkins*, 536 U.S. at 316–20; *Hall v. Florida*, 572 U.S. 701, 708–09 (2014). The Court's holding in *Atkins* is rooted in the class characteristics of persons with intellectual disability, including their "diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Atkins,* 536 U.S. at 318

In *Franklin v. Maynard*, the South Carolina Supreme Court established the procedure for determining whether a PCR applicant is intellectually disabled, and therefore, ineligible for the

[7] On April 29, 2025, the State moved to amend its response. The Court granted the unopposed request on June 9, 2025, and the State served the amended response on June 9, 2025.

[8] At the time of *Atkins*, the prominent language referred to intellectual disability as mental retardation. Since *Atkins* was decided, the Supreme Court has instructed that the term "intellectual disability" replaces and has the same meaning as what was previously referred to as "mental retardation." *Hall v. Florida*, 572 U.S. 701, 704–05 (citing Rosa's Law, 124 Stat. 2643).

death penalty. The Court held that the applicable definition of intellectual disability is found in the death penalty statute, which defines that condition as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." 356 S.C. 278–79, 588 S.E.2d at 605 (quoting S.C. Code Ann. § 16-3-20(C)(b)(10)). Thus, the definition of intellectual disability consists of three prongs: (1) significantly subaverage intellectual functioning; (2) deficits in adaptive behavior; and (3) a manifestation of these attributes during the developmental period.[9]

In post-conviction proceedings, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP; *see also Franklin*, 356 S.C. at 280, 588 S.E.2d at 606 ("As with other PCR claims, the applicant must show that he or she is [intellectually disabled] by a preponderance of the evidence"). A preponderance of the evidence means "proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence." *State v. Grooms*, 343 S.C. 248, 254 n.5, 540 S.E.2d 99, 102 n.5 (2000) (quoting 2 McCormick on Evidence § 339, 5th ed. 1999) (alteration in original).

WPM #6

IV. LEGAL ANALYSIS AND FACTUAL FINDINGS

In this case, the Court heard evidence from five witnesses, including four expert witnesses

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[9] Since *Atkins* was decided, the Supreme Court and South Carolina courts have consistently relied on the clinical definitions, instructions, and guidelines of both the American Psychiatric Association ("APA") and the American Association on Intellectual and Developmental Disabilities ("AAIDD") to inform the court's analysis of whether the diagnostic and legal criteria for intellectual disability are satisfied. *See, e.g.*, *Atkins*, 536 U.S. at 308 n.3; *Hall*, 572 U.S. at 710; *Moore*, 581 U.S. at 13; Order Finding Defendant Mentally Retarded in *South Carolina v. Pearson*, 96-GS-32-3338; Order: Finding of Mental Retardation in *George v. State*, 99-CP-26-1715; Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117, Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205; Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368; Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857; Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-152. Both organizations employ the same three-pronged definition embodied in South Carolina's death penalty statute and embraced by the South Carolina Supreme Court in *Franklin*.

and one lay witness. Applicant presented testimony of Dr. Sara Boyd and Dr. Alicia Hall. Both Dr. Boyd and Dr. Hall conducted evaluations of whether Applicant is a person with intellectual disability. Hrg. at 19–20, 159; Court's Ex. 1. Dr. Boyd and Dr. Hall provided extensive testimony about their evaluations, which included interviews with Applicant, review of records from throughout Applicant's life, and interviews with various collateral witnesses. Both Dr. Boyd and Dr. Hall opined independently that Applicant meets the diagnostic criteria for intellectual disability. Hrg. at 21, 107, 203, 207; Court's Ex. 1 at 13.

Dr. Sara Boyd, an expert for Applicant, conducted an intellectual disability evaluation of Applicant. Hrg. at 19–20, 110–111. She reviewed records for Applicant, including school records and other relevant life history records. Hrg. at 19–21, 44. She also reviewed similar records for Applicant's family members. Hrg. at 44. Dr. Boyd conducted several psychological interviews with Applicant and administered IQ testing on Applicant. Hrg. at 18–19, 52–53, 110. She also conducted several interviews with collateral witnesses as part of her evaluation, including former schoolteachers, school psychologists who evaluated him, his family members, and a childhood friend and coworker. Hrg. at 101–102, 111–112. This Court had the opportunity to observe Dr. Boyd on the stand and had the opportunity to consider the evidence and testimony she presented. The Court finds Dr. Boyd conducted a thorough evaluation in compliance with the diagnostic framework. The Court further finds Dr. Boyd's opinions and conclusions credible and well-grounded based on the record.

WPC #7

At the hearing, Applicant also called Dr. Alicia Hall as an expert witness. Dr. Hall, who works at DDSN, was appointed to conduct an evaluation for these proceedings at the State's request. Order (July 3, 2019); Hrg. at 153, 159. She conducted an intellectual disability evaluation of Applicant, which included reviewing records for Applicant, conducting a psychological interview of Applicant, reviewing the raw data from Dr. Boyd's IQ testing of Applicant, and

interviewing collateral witnesses as part of her evaluation, including former schoolteachers, school psychologists who evaluated him, his brother, and a childhood friend and coworker. Court's Ex. 1 at 3; Hrg. at 162–163, 167–170. Dr. Hall testified that Applicant's case is the ninth *Atkins* case she has participated in for DDSN, and she is well versed in what is required to meet South Carolina's definition of intellectual disability based on her many years of conducting such evaluations as part of her job at DDSN. Hrg. at 156–158, 264–266. The Court had the opportunity to hear the evidence and testimony from Dr. Hall and observe her on the stand. The Court finds Dr. Hall conducted a thorough evaluation in compliance with the Court's order for an *Atkins* evaluation and in compliance with the diagnostic framework. The Court further finds Dr. Hall's opinions and conclusions credible and supported by the weight of the evidence.

The Court also heard evidence from two expert witnesses presented by Respondent, Dr. Michael Vitacco and Dr. Kimberly Kruse. Dr. Vitacco and Dr. Kruse were qualified as experts in forensic psychology. Hrg. at 288, 305. Neither Dr. Kruse nor Dr. Vitacco administered any testing, interviewed Applicant, or conducted an evaluation of whether Applicant is a person with intellectual disability. Hrg. at 288–289, 298–299, 306, 317, 320.

WOW #8

Dr. Vitacco reviewed reports authored by Dr. Boyd and Dr. Hall. Hrg. at 289, 298. He was not asked to and did not render an opinion on whether Applicant is intellectually disabled. Hrg. at 289, 298–299. Dr. Vitacco testified that he "was not asked" to evaluate Applicant or to give an opinion regarding intellectual disability in his case. Hrg. at 288–299, 298–99. He further testified that he had not done an *Atkins* evaluation before. Hrg. at 296, 298. He had never met Applicant, reviewed any of the life history records relevant to an intellectual disability determination, or interviewed any collateral witnesses about Applicant. Hrg. at 298–299. The only documents Dr. Vitacco reviewed were reports authored by Dr. Boyd and Dr. Hall. Hrg. at 298–299.

Dr. Kimberly Kruse testified that she was asked to "review records," and to provide an

opinion on what Applicant's records demonstrated regarding his intellectual functioning. Hrg. at 305–306. She was not asked to conduct a diagnostic evaluation. Hrg. at 305–306. Dr. Kruse opined that based on the records she reviewed, it appears that Applicant could have a non-verbal learning disorder.[10] Hrg. at 306–307, 317–318. Dr. Kruse testified that she had never done an *Atkins* case before. Hrg. at 316. In preparation for her testimony, she looked at some life history records but did not meet or interview Applicant. Hrg. at 306, 317. She also did not conduct any collateral interviews of witnesses about Applicant. Hrg. at 320.

Since neither Dr. Vitacco nor Dr. Kruse interviewed Stone or any collateral witnesses or conducted a comprehensive assessment of whether Stone is a person with intellectual disability, this Court finds that the testimony and opinions of Dr. Boyd and Dr. Hall are more credible. This conclusion is further supported by the fact that both Dr. Boyd and Dr. Hall have significantly more experience in conducting intellectual disability evaluations than do Dr. Kruse and Dr. Vitacco.

1. Significantly Subaverage Intellectual Functioning

WPK #9

The Court finds that Stone met his burden of proof to satisfy prong one—that he has "significantly subaverage intellectual functioning." S.C. Code § 16-3-20 (C)(b)(10). A person meets this prong if his or her intellectual functioning, as measured by a comprehensive standardized IQ test, is approximately 75 or less (approximately two standard deviations below the mean, considering the standard error of measurement). *Atkins*, 536 U.S. at 309 n.5 ("It is estimated that between 1 and 3 percent of the population has an IQ between 70 and 75"); DSM-5-TR at 42 (describing people with intellectual disability as including those with IQ scores up to "somewhat above 65-75" when adaptive deficits are present). Clinical judgment is important when interpreting IQ test scores and assessing intellectual disability in general. DSM-5-TR at 42. When

[10] For the purposes of the present action, the Court does not need to determine whether Stone has a non-verbal learning disorder. As discussed in Section IV(1), a learning disorder and intellectual disability are not mutually exclusive and people can have comorbid diagnoses.

considering a score obtained on an intelligence test, a court must also consider certain factors that have an impact upon how test scores must be interpreted, such as the standard error of measurement. *Hall*, 572 U.S. at 713–14; *Moore*, 581 U.S. at 13–14.

Another factor that can affect the interpretation of test scores is norm obsolescence, or the Flynn effect, which recognizes that testing norms become outdated over time, and the age of the norms should be taken into account when interpreting an IQ test score.[11] The Court recognizes and yields to the expertise of Dr. Hall and Dr. Boyd in accepting that it is proper to consider norm obsolescence or the Flynn effect when evaluating Applicant's IQ test scores, though in common experience the Court questions the premise that IQ scores for the general population are currently rising. At the hearing, Dr. Hall and Dr. Boyd both testified that they made Flynn adjustments in their evaluations, and the State's experts agreed it was clinically appropriate to do so. Hrg. at 31–32, 40–42, 176–177, 266, 299–300, 314–315. Moreover, other South Carolina courts have accepted and applied the Flynn effect to the test scores. *See* Order Finding Defendant Mentally Retarded, *South Carolina v. Pearson*, 96-GS-32-3338 (S.C. Cir. Ct. Gen. Sess. Dec. 14, 2005); Order Granting Post-Conviction Relief Pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), Vacating Death Sentence, *Bell v. South Carolina*, 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016); Order, *South Carolina v. Brown*, 2011-GS-30-1523 (S.C. Ct. Gen. Sess. Apr. 14, 2016).

WPM #10

Courts and clinicians both recognize that determining whether an individual has significantly subaverage intellectual functioning requires consideration of more than just assessing an individual's reported test scores, as "intellectual disability is a condition, not a number." *Hall*, 572 U.S. at 723; *Moore*, 581 U.S. at 15; *Brumfield v. Cain*, 576 U.S. 305, 316 (2015); Hrg. at 186–

[11] As Dr. Boyd and Dr. Hall both explained at the hearing, the Flynn effect research has established that generally, the population's intelligence rises about 3 IQ points every decade. Hrg. at 31–32, 176. The common practice is to multiply the number of years between when an IQ test was normed by either 0.3 or 0.33. Hrg. at 41. Dr. Boyd and Dr. Hall both applied the Flynn effect in their evaluations of Applicant. Hrg. at 31–32, 40–42, 50–54, 176–177; Court's Ex. 1 at 10–11.

187. Because of this, assessing intellectual functioning includes more than mere review of IQ scores. As Dr. Hall explained, the clinical standards require looking at someone's "functionality," instead of using a bright cut-off line on an IQ score when assessing someone's intellectual functioning. Hrg. at 186–187; *see also Hall*, 572 U.S. at 719–21.

The evidence established that Applicant was administered four full scale IQ tests throughout the course of his life. All four tests were Weschler intelligence tests, which have been recognized as acceptable full scale IQ tests to accurately and reliably determine someone's IQ as part of an intellectual disability evaluation. *E.g.*, *Hall*, 572 U.S. at 734; Hrg, at 26, 39–40, 175–176, 178–179, 184–185. Applicant's IQ scores, along with the adjustments to account for norm obsolescence are:

- A Weschler Intelligence Scale for Children ("WISC") in 1975. Applicant obtained a full scale IQ score of 86, as reported in a special education services evaluation report. As the test norms were decades out of date given that it was normed in 1949, this score adjusted to about 77.

- A Weschler Intelligence Scale for Children-Revised ("WISC-R") in 1976. Applicant obtained a full scale IQ score of 78, as reported in a special education services evaluation report. As the test was normed in 1975, no score adjustment would be considered necessary.

- A Weschler Intelligence Scale for Children-Revised ("WISC-R") in 1979. Applicant obtained a full scale IQ score of between 69 and 75, as reported in a special education services evaluation report. As the test was normed in 1949, this score adjusted to approximately 67 to 73. This test score resulted in a determination that Stone met the then criteria for Educably Mentally Retarded status.

- A Weschler Adult Intelligence Scale, Fourth Edition ("WAIS-4") in 2017, administered by Dr. Boyd. Applicant obtained a full scale IQ score of 79. As the test was normed in 2007, this score adjusted to between 75 or 76.

The expert opinions from Dr. Hall and Dr. Boyd are that these scores were significantly subaverage when compared to the population. Hrg. at 56–57, 185–187, 189. As Dr. Hall explained in her report, these scores are "in the range of individuals who have been adjudicated to have

Intellectual Disability." Court's Ex. 1 at 13.[12]

In finding Applicant satisfies the intellectual functioning prong, the Court also considered evidence that was presented about Applicant's special education evaluations and his results from academic achievement testing. Applicant was flagged for assessment for special education services in the third grade. App. Ex. 3 at 50–51; Hrg. at 76, 78–81, 171–172. Applicant was classified as needing special education services then and continued to receive services until he left school after the ninth grade. App. Ex. 3 at 23–26, 50–56; Hrg at 76–86, 88–89, 171–173. When he was fourteen, his special education classification was changed from learning disability to educable mentally handicapped ("EMH"),[13] as his results from testing and grades

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[12] Respondent's expert Dr. Kruse testified that she had no reason to question these full scale IQ scores, but in her opinion, based on examining the subtest results from Applicant's 2017 IQ testing demonstrating lower functioning in perceptual reasoning than in other areas of functioning, Applicant had nonverbal learning disorder. Hrg. at 310–311, 317–318, 320. As was testified to at the hearing, learning disorder and intellectual disability are not necessarily mutually exclusive and people can have comorbid diagnoses. Hrg. at 276–277, 312, 318. *See also* DSM-5-TR at 45 (recognizing learning disorders commonly co-occur with intellectual disability); *Moore*, 581 U.S. at 17 (recognizing that "many intellectually disabled people also have other mental or physical impairments," and counseling courts that the existence of a comorbid condition "is not evidence that a person does not also have an intellectual disability."); *Brumfield*, 576 U.S. at 319–20 ("The diagnostic criteria for [Intellectual Disability] do not include an exclusion criterion; therefore, the diagnosis should be made . . . regardless of and in addition to the presence of another disorder.")

WPM #12

[13] During Applicant's school years, the classification of educable mentally handicapped was parallel with the diagnostic criteria for intellectual disability. As Dr. Hall testified, to qualify for the educable mentally handicapped classification at school, a student would need to "have below average or sub-average intellectual functioning in conjunction with deficits of adaptive behavior." Hrg. at 169. She explained that "schools actually call it 'intellectual disability' right now." Hrg. at 173, 196. It was established at the hearing that "educable mentally handicapped" was a designation used by the Sumter County school system to classify students as needing special education supports and services parallel to the kinds of supports and services needed by individuals with mild intellectual disability. Hrg. at 55–56, 169, 173, 180, 196, 217–218. The State believes that this Order overstates evidence about the services Applicant was provided when he was reclassified from having a learning disability to what was at the time called "educable mentally handicapped." The State notes as an example Dr. Harris' testimony suggesting there might have been very little difference between the services. (Tr. 339–40).

demonstrated that he needed more special education support than he was receiving. App. Ex. 3 at 55–56; Hrg. at 55–56, 173, 180.

Applicant's academic achievement testing results show he was "typically a couple of grades below what would be expected" for someone in his grade level. Hrg. at 57–58, 180–181, 183. Applicant first took academic achievement testing in the third grade when he was nine years old, and where his mental age was commensurate to an eight-year-old on a Slosson Intelligence test and a seven-year-old on a Peabody Picture Vocabulary test. App. Ex. 3 at 50; Hrg. at 178. When he was eleven years old, at a reevaluation for special education services, Applicant's mental age was commensurate to a nine-year old on a Peabody Picture Vocabulary test and a six-year-old on a Bender Gestalt, and was reading at a second-grade level according to a Wide Range Achievement Test. This all indicated Applicant had low psychological functioning to the school evaluator. App. Ex. 3 at 53. During his second reevaluation for special education services when he was fourteen, Applicant performed "in the slow learner range of functioning" on the Peabody Picture Vocabulary test, his mental age was measured as 8 and a half years old on a Bender Gestalt, and a Wide Range Achievement Test reported that he was reading at a fourth-grade level. App. Ex. 3 at 54–55. Applicant's final academic achievement testing in the ninth grade showed that his overall academic performance was at a fourth-grade level. Court's Ex. 1 at 5–6; App. Ex. 3 at 31; Hrg. at 89–90, 174. As Dr. Hall explained, "it is not unusual for you to see this type of progression in kids who have mild ID," because they grow and mature "at a slower pace than their neurotypical peers." Hrg. at 183. As the demands grow, "you then can see a significant difference between the functioning." *Id.* Dr. Hall saw this pattern in Applicant's academic achievement testing and found it relevant to her prong one analysis. *Id.*

As. Dr. Hall articulated in her report, Applicant's "deficits in intellectual functioning are evidenced by his limited reasoning and problem-solving skills, planning ability, abstract thinking,

judgment, and academic learning, confirmed by multiple academic assessments and standardized intelligence testing (WISC, WISC-R, WAIS-4 and Peabody)." Court's Ex. 1 at 13. The Court agrees. Applicant's IQ scores are all approximately two standard deviations below the norm, and other evidence such as his academic achievement testing scores demonstrates intellectual functioning that is significantly below average. Accordingly, based on the totality of the evidence, including the experts' opinions and testimony, the Court finds that prong 1 is satisfied by a preponderance of the evidence.

2. *Deficits in Adaptive Behavior*

Applicant has met his burden of proof regarding prong 2— deficits in adaptive behavior. The evidence before the Court establishes that Stone has significant deficits in conceptual and practical skills. The evidence also demonstrates deficits in the social domain.

South Carolina's definition of intellectual disability sets forth the second prong as "deficits in adaptive behavior." S.C. Code Ann. § 16-3-20 (C)(b)(10). At the hearing, it was established that adaptive functioning looks at a person's ability to meet the demands of community living independently. Hrg. at 14–15, 60, 186–187; AAIDD-12 at 29. To satisfy this prong, an individual must demonstrate deficits in one of three skill areas of adaptive behavior: conceptual, social, or practical. *Moore*, 581 U.S. at 15–16; AAIDD-12 at 31; DSM-5-TR at 37. Evaluating adaptive behavior looks at a person's typical behavior in the community without support, and deficits exist when at least one skill area "is sufficiently impaired that ongoing support is needed for the person to perform adequately across multiple environments, such as home, school, work, and community." DSM-5-TR at 42. *See also*, DSM-5-TR at 37, AAIDD-12 at 29–31, 38–39, 42. Individuals with intellectual disabilities will typically demonstrate both strengths and limitations in adaptive behavior, and evidence of adaptive strengths may not be used to rule out evidence of adaptive deficits. *Moore*, 581 U.S. at 15; AAIDD-12 at 40; *Brumfield v. Cain*, 576 U.S. 305, 320

WPC #14

(2015) ("Intellectually disabled persons may have strengths in social or physical capabilities, strengths in some adaptive skill areas, or strengths in one aspect of an adaptive skill in which they overwise show an overall limitation."); Hrg. at 58–59, 99, 190–192.

a. Conceptual Domain

The testimony before the Court described conceptual skills as "basically academic skills." Hrg. at 60.[14] Individuals with conceptual domain deficits "have difficulty learning academic skills like reading, writing, understanding time and money, things like that, and they need additional support to meet age-related expectations." Hrg. at 62. Conceptual domain deficits commonly manifest in children as being held back in school or being placed in remedial or special education.

In adults, these deficits commonly manifest as "problems with good judgment, with reasoning, with forecasting consequences," and might include naiveté and gullibility and problems with "functional academic skills." Hrg. at 62–63. Evaluating someone's conceptual domain functioning includes assessing "how they did in school," but also an evaluator would assess someone's job history and whether that history included jobs that require someone to "use a lot of academic skills." Hrg. at 76. As Dr. Hall testified, school records are commonly relied on for *Atkins* evaluations because someone's "deficits have to be present during the developmental period, and so school records are contemporaneous records that allow us to get an insight into the person's functioning during the developmental period . . . particularly if we're talking about a person who is well outside of the developmental period." Hrg. at 164. As Dr. Boyd testified, Stone has "longstanding conceptual impairment," that is apparent from his school records and special education history, and this impairment has continued through his adulthood. Hrg. at 76.

Significant evidence was presented about Applicant's longstanding academic difficulties.

[14] The DSM-5-TR recognizes the conceptual domain includes "competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations." DSM-5-TR at 42.

Applicant struggled to achieve in school from a young age, failing the first grade. App. Ex. 3 at 40–42; Hrg. at 76–77. His grades did not significantly improve after his second time in first grade and, after failing the fourth grade, he was referred for assessment for special education services. App. Ex. 3 at 50–51; Hrg. at 76, 78–80, 171–172. Applicant was classified as a learning disability resource student and placed in resource classrooms for most of his classes, as the special education evaluator was concerned about his "academic functioning," including "reading" and "math skills," and his time in resource rooms "would be a time where they strengthen those skills, helped him and reinforced the lessons that he would be learning in his regular classroom setting." Hrg. at 171–172.

Applicant's grades did not improve even with the addition of special education services and Applicant was reclassified as an EMH student in the seventh grade, when he was fourteen. App. Ex. 3 at 55–56; Hrg. at 85–86, 179–180. In his reevaluation for special education services in the seventh grade, the evaluator conducted an adaptive functioning assessment which showed Applicant's adaptive functioning was "generally below the normal range," with some areas of functioning producing IQ equivalent scores in the 50s, well below the normal range. App. Ex. 3 at 55; Hrg, at 73, 141–142, 181–183. Academic achievement testing at this time consistently reported Applicant was performing at least one to two grades lower than his grade level. App. Ex. 3 at 52–56; Hrg. at 81–82, 179. Despite having access to increased special education services, Applicant still struggled, earning only Ds in eighth grade and primarily Cs and Ds in ninth grade. App. Ex. 3 at 23–26; Hrg. at 88–90, 173. Applicant ultimately dropped out of high school after the ninth grade and went to work doing "relatively menial, physical work," such as tree trimming up until his incarceration. Hrg. at 90, 173. These jobs were "physically demanding," but involved the kind of "work that was not reliant on advanced academic skills," and did not require Applicant to complete "complicated multi-step processes." Hrg. at 90, 92. Applicant's final academic testing

before leaving school indicated he was performing at a sixth-grade level in reading, a third-grade level in language, and a fourth-grade level in mathematics, and a fourth-grade level overall. App. Ex. 3 at 31; Hrg. at 89.

Based on all this information, Dr. Boyd opined that Applicant's conceptual domain functioning is "significantly impaired and has been since at least early childhood." Hrg. at 92. Dr. Hall similarly testified that "consistently, throughout his schooling, [Applicant] had deficits" in the conceptual domain. Hrg. at 174–175, 189. The Court has considered the evidence and agrees, finding that Applicant has significant deficits in his conceptual domain of adaptive functioning.

b. Practical Domain

The testimony before the Court described practical skills as the "daily living skills," including the ability to dress and feed yourself, doing laundry, cleaning yourself and your living environment, making medical decisions, using money to make purchases, and work skills like learning skilled job tasks and meeting the demands of jobs without assistance or supervision.[15] Hrg. at 190–191. Practical domain considerations also include evaluating where a person can "navigat[e] in the community safely," including tasks like, "using public transportation, communication devices, things like that. So, it's very much the sort of living in the community part aside from interacting with other people or having to use academic skills." Hrg. at 93. Because of this, a portion of evaluating adaptive skills includes "looking at not just how are they doing in their day-to-day life . . . [but also] how is this person getting help and how formal or informal has it been." Hrg. at 68. At the hearing, Dr. Boyd and Dr. Hall reported the information they each collected about Applicant's practical domain functioning from interviews with Applicant, the

WPK #17

[15] The DSM-5-TR recognizes the practical domain "involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization." DSM-5-TR at 42.

collateral interviews they conducted, and the extensive record review that was encompassed in their evaluations.

The evidence established that Applicant never lived independently, living between his family home and the homes of his romantic partners. Hrg. at 201. People who knew Applicant as a child or who lived with him as an adult indicated that Applicant relied on other people, namely his mother and romantic partners, for assistance with most of the household tasks, including taking care of "cleaning the house; keeping up with appointments, including his appointments; you know, preparing meals, planning meals, budgeting money. . . [and] housework." Hrg. at 93–94, 200–202; Court's Ex. 1 at 12–13. Applicant's contributions to the household were mowing the lawn and taking care of outside tasks, like repairing things, which he learned to do by observing his stepfather and imitating what he did. Hrg. at 94, 97, 200. An adaptive behavior scale administered when Applicant was fourteen demonstrated his adaptive functioning was "generally below the normal range," with scores significantly below the normal range of functioning for "independent functioning" and "economic activity." App. Ex. 3 at 55; Hrg. at 72–73, 141, 181–183.

WPC #18

Following his departure from school, Applicant held a number of "menial" jobs that largely consisted of "physical" tasks, mostly working trimming trees, which required Applicant to go to the job site where the boss would tell him what to do. Hrg. at 90–92, 229. Applicant was able to obtain employment and contribute monetarily to the household needs. Hrg. at 93–94, 234. He obtained jobs through informal supports, as "he wasn't somebody who would go . . . fill out a job application and then do an interview and get a job." Hrg. at 191. Rather, his stepfather "would typically secure some kind of employment for him," even working for his tree business where he "supervised him with some tasks as well, personally and directly on the job." Hrg. at 91, 94–95, 194. As Dr. Hall explained, Applicant "would gain employment through a family or a friend, lose that employment, and then require assistance of a family or a friend to get another position." Hrg.

at 229. On the job, Applicant "was a hard worker," but was not the kind of employee who would "take initiative, never was assigned a supervisory position, was never a person who would be required to fill out the paperwork or even really interact with the clients. . . [h]is role was strictly laborer." Hrg. at 192, 194. Applicant also did not manage his finances. He would "bring the money that he made from his jobs home, and then the partner or his mother would manage that money," as Applicant "didn't manage a bank account, he didn't write checks, [and] never had a credit card." Hrg. at 94–95, 200.

Based on this information, Dr. Boyd opined that Stone had a deficit in his practical domain functioning as he "hasn't demonstrated the ability to do [the daily tasks of living] without somebody doing them for him." Hrg. at 93–94. Dr. Hall similarly opined that Stone "had some deficits in practical" skills, although she acknowledged his strong work ethic was a potential relative adaptive strength. Hrg. at 190–192. As Dr. Hall explained, "just because Mr. Stone was a hard worker and took pride in his work, doesn't negate the deficits that he had." Hrg. at 192. Additionally, Dr. Hall gathered evidence that Stone had support in the community that allowed him to function, namely in the form of "support from his family and paramours," without which his functioning would be limited. Court's Ex. 1 at 13; Hrg. at 250–251. Accordingly, she opined that Stone had practical domain deficits. Hrg. at 192.

WPK #19

Based on this information, the Court finds that it is established by the preponderance of the evidence that Applicant requires significant support, whether formal or informal, to accomplish many daily tasks of living. Accordingly, the Court finds that Applicant has significant deficits in the practical domain of adaptive functioning.

c. Social Domain

The testimony at the hearing established that the social domain includes the many components of social interaction. As Dr. Boyd testified, evaluating a person's social skills requires

understanding "what is this person's social judgment like, do they understand the social rules. . ." and assessing questions like "do they have good judgment about who they're friends with, do they understand that other people's motives towards them may not be evident or positive." Hrg. at 60. As Dr. Hall further explained, this is more than "if they can just have social relationships [be]cause folks on the ID scale tend to be pretty social, but we're talking about high order social ability so that it's more than just understanding social norms and social relationships, but can they infer about the quality of social relationships." Hrg. at 191. This includes an assessment of if "they know when people are taking advantage of them," as social domain deficits commonly present as "gullibility and vulnerability to manipulation." Hrg. at 98, 191.

The available evidence demonstrates that Applicant was "a fairly likeable child, that at times it was -- you know, he could be outgoing and that he really liked -- like he related to younger kids and was good at playing with them," and "he did have dating relationships" and friendships, although, "it doesn't sound like they were really the best friendships." Hrg. at 100. People who knew Applicant as a child described him as "not a good judge of character," when it came to friendships, and "there were people who he hung around with that would take advantage of him, that would get him to do things that were -- they classified as 'illegal' or . . . things that could possibly get him into trouble." Hrg. at 199–200. These people would "mistreat him," and "would do things to show him that they weren't trustworthy but he wouldn't accept it and wouldn't necessarily pick up on that this is gonna happen again if I continue to make myself vulnerable to it." Hrg. at 98–99. Friends remember that Applicant would think someone was his friend if they were kind to him and would be loyal to that person. Hrg. at 194. For example, Applicant had some acquaintances who "stole a vehicle of some kind from him," as a teenager and he continued to spend time with them socially. Hrg. at 99.

WPM #20

Both Dr. Boyd and Dr. Hall considered Applicant's social judgment and social

relationships and opined that he had social domain deficits, beginning in at least his adolescence. Hrg. at 74–75, 100, 102, 206, 276. While Dr. Boyd opined that Applicant had some relative strengths in his overall adaptive functioning in the social domain, she recognized that the presence of strengths "is extremely common," and does not detract from the reality of existing adaptive deficits. Hrg. at 63–65, 75, 99. As she explained, "social skills are where most people with ID try to pick up a little bit of the slack in terms of masking their problems and trying to sort of fly under the radar of detection." Hrg. at 100. Overall, when considering the convergence of the available evidence, Dr. Boyd opined that despite the existence of some strengths, Stone still had deficits in this domain. Hrg. at 75, 99–101.

Based on this information, the Court finds that Applicant has established by the preponderance of the evidence that Applicant has some deficits in his social domain functioning and some relative strengths. However, the presence of adaptive strengths cannot be used to detract from the existence of adaptive deficits. *Moore*, 581 U.S. at 17. Satisfaction of prong two requires deficits in only one of three domains. Considering each of the areas of adaptive functioning, the Court finds that prong two has been established by the preponderance of the evidence.

CWPK #21

3. Onset in the Developmental Period

Intellectual disability is a developmental disorder, and the third prong the Court must assess is if a person's deficits in intellectual functioning and adaptive behavior "manifested in the developmental period." S.C. Code § 16-3-20 (C)(b)(10). The developmental period is the timespan of a person's life up to the age of 18 or 22. Hrg. at 17–18, 204, 210–211. The analysis of age of onset does not require an individual to have been diagnosed with intellectual disability during the developmental period; instead, the signs of intellectual disability only need to have manifested in that period. *See Brumfield v. Cain*, 576 U.S. 305, 308–10 (2015); Hrg, at 13–14, 180; App. Ex. 3 at 55–56. However the record evidence in this case indicates a school determination of Applicant's

intellectual disability, which is conclusive of prong 3.

The Court finds that Stone met his burden of proof regarding this prong of intellectual disability. The evidence before the Court includes Applicant's school records which include information about Applicant's academic performance. Applicant's school records also include several reports of evaluations for special education services. I find it appropriate to give these records weight in the analysis of prong 3 because they are records that were made contemporaneously to Applicant's childhood and were created before the instant offense and at a time when Applicant had no reason to be motivated to have documentation of intellectual disability.

These records document Applicant's consistent academic decline across his childhood, which continued even after Applicant was given special education services. These evaluations reported testing results, including three of Applicant's IQ scores, as discussed above, and the results of an adaptive behavior scale that was administered when Applicant was fourteen. Applicant's standardized score on this adaptive behavior scale was 52 to 59, which is significantly subaverage. App. Ex. 3 at 50–56; Hrg. at 72–73, 181–183. The school records also indicate that when Applicant was fourteen, the school evaluator found it necessary to classify Applicant as educable mental handicapped, which is a school classification for special education services. App. Ex. 3 at 55–56. As Dr. Hall testified, this classification is called intellectual disability today. Hrg. at 180, 196. The evidence before the Court also includes information elicited from collateral witnesses who knew Applicant when he was a child which support the existence of significantly subaverage intellectual functioning and deficits in adaptive behavior when Applicant was in the developmental period. Hrg. at 89, 101–102, 104, 111–112, 134, 167, 194–195, 197–200, 237–238.

V. CONCLUSION

For the reasons discussed above, this Court finds that this is a proper action under the

Uniform Post-Conviction Procedure Act and Applicant is therefore entitled to pursue relief through this action. S.C. Code 17–27-160.

Based on all the evidence submitted, including testimony, records, and reports, this Court finds that Bobby Wayne Stone is a person with intellectual disability, and therefore, he is ineligible for the death penalty.

NOW THEREFORE IT IS ORDERED that Bobby Wayne Stone's death sentence is vacated. This case is remanded to the Court of General Sessions for resentencing in conformity with this Order.

IT IS SO ORDERED.

William P. Keesley
Circuit Court Judge

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November 12, 2025.