

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

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

STATE OF TENNESSEE)
)
v.) No. M1988-00096-SC-DPE-DD
)
PERVIS TYRONE PAYNE)

SYLLABUS TO THE
RESPONSE IN OPPOSITION TO MOTION TO SET EXECUTION
DATE, REQUEST FOR AN ATKINS HEARING, AND REQUEST FOR
CERTIFICATE OF COMMUTATION

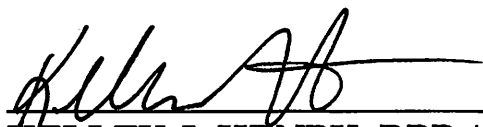
The execution of Mr. Payne would be illegal, because he is intellectually disabled. Mr. Payne presents proof he meets each of the three prongs of Tennessee’s intellectual disability exemption and explains the need for this Court to create a procedural vehicle for the adjudication of his claim. Mr. Payne is the only person on death row for whom adjudication of his claim was blocked by the lower courts’ misunderstanding of this Court’s holding in *Howell v. State*, 151 S.W. 3d 450 (Tenn. 2004).

Mr. Payne has a strong case of actual innocence. As the *Atkins* line of cases reflect, execution of the intellectually disabled is categorically banned, in part because a defendant’s intellectual disability compromises the heightened reliability required for the death penalty to be constitutional. Recently, counsel discovered suppressed, exculpatory

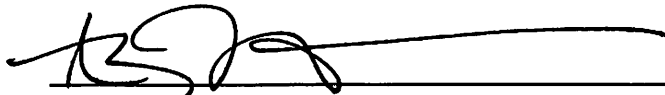
physical evidence inconsistent with the prosecution's case in the "residue" evidence maintained by the Shelby County Criminal Court Clerk. That evidence contains DNA (blood and possibly semen), is manifestly inconsistent with the prosecution's theory, and would show Mr. Payne's actual innocence. Because this Court previously denied DNA testing pursuant to *State v. Alley* which has subsequently been overruled and in light of this newly discovered, suppressed evidence, this Court should deny the State's motion and remand the case for further proceedings pursuant to the DNA Act.

Mr. Payne's execution would violate the constitution because he is mentally ill. Further, this Court should declare the death penalty is unconstitutional because it is racist and out of step with the evolving standards of decency that have led most of the country to stop executing citizens.

This syllabus is respectfully submitted this the 30th day of December, 2019.



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