Daryl Renard Atkins v. Commonwealth of Virginia

Background

On August 16, 1996, Daryl Renard Atkins and his friend, William Jones, were high on marijuana and drunk. They went to a convenience store to get more beer. In the parking lot, Atkins told Jones that he would beg for money to buy the beer. A 21-year-old man, Eric Nesbitt, from a nearby military base soon stopped at the store. Atkins and Jones robbed the man and then took him to a field where Atkins shot and killed him.

In February 1998, Atkins was convicted in York County, Virginia of capital murder and robbery. The jury sentenced Atkins to death. However, due to incomplete sentencing instructions Atkins' sentence was vacated and a second sentencing was ordered.

The second jury considered information about Atkins' intelligence in sentencing. Both sides presented expert testimony from clinical psychologists. The psychologist for Atkins cited his low IQ score of 59 and his inability to function independently as evidence of Atkins' intellectual disability. (An IQ score of 100 is considered average in the adult population.) The state's psychologist disagreed, finding that Atkins' ability to recall people and events in history along with a sizable vocabulary as evidence that a diagnosis of intellectual disability was inaccurate. The second jury again sentenced Atkins to death.

Atkins and his attorneys appealed his sentence to the Virginia Supreme Court. Atkins' attorney argued that the death penalty was too harsh of a punishment for someone with an IQ of 59. No one with a documented IQ of 59 or less had ever been executed in Virginia. Therefore, Atkins argued the punishment was disproportionate to sentences that were typical in Virginia and should be considered cruel and unusual.

Virginia claimed the Atkins' sentence was not too harsh and did not violate the "cruel and unusual" punishment clause of the Eighth Amendment. Virginia cited the 1989 case of *Penry v. Lynaugh* (492 U.S. 302) in which the U.S. Supreme Court decided that the execution of people with intellectual disabilities did not violate the Eighth Amendment because there was not a national consensus against such executions. In the majority opinion, Justice Sandra Day O'Connor wrote:

> The public sentiment expressed in these and other polls and resolutions may ultimately find expression in legislation, which is an objective indicator of contemporary values upon which we can rely. But at present, there is insufficient evidence of a national consensus against executing people with intellectual disabilities convicted of capital offenses for us to conclude that it is categorically prohibited by the Eighth Amendment.

The Virginia Supreme Court upheld the death penalty decision of the lower courts.

Arguments for Atkins

– A national consensus has emerged in the United States against executing people with intellectual disabilities. Many states have passed laws that prohibit the death penalty in cases where the defendant has an intellectual disability. In 1989 the Supreme Court ruled in *Penry v. Lynaugh* (492 U.S. 302) that there was not a national consensus against executing people with intellectual disabilities. At that time, only the federal government and two states (Maryland and Georgia) prohibited such executions. Since *Penry*, 16 states have passed laws that prohibit the

execution of people with intellectual disabilities and 12 states currently have no death penalty. A total of 30 states, then, do not execute people with intellectual disabilities.

–Atkins was found to have an IQ of 59, which makes his intelligence similar to that of an average nine year old. Atkins' IQ places him in the category of intellectual disability and ranks in the bottom 2% of the adult population. The Supreme Court has ruled that defendants 15 years old or younger cannot be given the death penalty. Someone who has the thinking and the reasoning skills of a child should not be given the stiffest punishment. As a society, we do not accept the execution of children and therefore, we should not accept the execution of anyone with the mental ability of a child.

–Prisoners with intellectual disabilities face a high risk of being convicted for crimes they did not commit. There have been cases throughout the country in which new evidence has proven death row inmates to be innocent. An example is the case of Earl Washington. Washington, with an IQ of 69, confessed to a rape and murder and was sentenced to death in 1983. In 1999, DNA tests confirmed that Washington was innocent and he received a pardon. Unfortunately, it is common for offenders with intellectual disabilities to give false confessions. This occurs because individuals with intellectual disabilities have a strong desire to please others and may confess to please the police officers. Another characteristic of people with intellectual disabilities is the tendency to believe something that has been suggested to them. This suggestibility can cause offenders to remember and admit to events that may not have occurred.

–People with intellectual disabilities should be considered as a special category of defendants because they share common characteristics that make it difficult to participate in their own defense. Defendants may tell their attorneys that they understand what is occurring in the courtroom, but often they do not. Defendants with intellectual disabilities may also display inappropriate behavior such as smiling and laughing during the trial. The jurors may incorrectly interpret this behavior as indicative of a lack of remorse. Once convicted to death it is very difficult for people with intellectual disabilities to initiate the proceeding for an appeal. There are many procedures to follow and deadlines to meet to appeal a death penalty conviction. This process is complicated for an inmate with average intelligence, much more so for someone with an intellectual disability.

–The Supreme Court has found that the Eighth Amendment (banning cruel and unusual punishment) contains room for interpretation based on an "evolving standard of decency." In this case, it means that over time the citizens in the United States have changed their beliefs on what constitutes cruel and unusual punishment. The United States has matured as a nation and therefore their values have changed. It is currently unconstitutional to execute the mentally ill and children. It would be a logical next step to make it unconstitutional to execute people with intellectual disabilities.

–Since World War II, many nations in the international community have taken a strong stand in opposition to the death penalty as a form of punishment. After World War II, many countries in Europe abandoned or restricted the death penalty after signing and ratifying the Universal Declaration of Human Rights. In April 1999, the United Nations Human Rights Commission passed a resolution supporting a worldwide ban on executions. More than half of the countries in the international community have abolished the death penalty completely or kept it only for the most extraordinary circumstances. The United States was one of ninety countries, including China and Iran, to vote against the resolution. The European Union has filed a brief in support of Atkins, arguing that an international consensus exists against the executions of people with intellectual disabilities. The United States' position on this issue has hurt its diplomatic relationships with many countries throughout the world.