

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 Virginia

—Currently, a jury makes the decision on whether an individual should be given the death penalty. During sentencing the jury can be told that the defendant has an intellectual disability. The jury then decides on a case by case basis if the intellectual disability is a compelling reason not to give the death penalty. There are considerable differences among people with intellectual disabilities. The jury can take those differences into account before deciding on an appropriate

sentence. Therefore, people with intellectual disabilities are given adequate protection by the courts and the law.

—Individuals will claim they have intellectual disabilities to avoid being given the death penalty. There is no definitive test that can be administered that will prove that someone has an intellectual disability. Unfortunately, we cannot take a DNA sample to determine an individual's intelligence. The IQ test is one measure of intelligence and the ability to function in society is another measure.

—Atkins does not have an intellectual disability. He does not have the characteristics of people with intellectual disabilities, which include limitations and impairments in functioning in society. The American Psychiatric Association has an official manual (DSM IV) that is used in diagnosing mental disorders, including intellectual disabilities. Dr. Samenow, the clinical psychologist who examined Atkins for Virginia, consulted the manual and found Atkins to be high functioning and not so impaired as to consider him a person with intellectual disabilities. Dr. Samenow attested to Atkins' ability to remember when John F. Kennedy was President and also the recipe for cooking chicken as examples of high functioning. Atkins does not have intellectual disabilities; he simply lacks the motivation to succeed in life. Also, the DSM IV clearly states that a diagnosis for intellectual disabilities must occur before an individual turns 18. Atkins was not diagnosed until he was an adult in preparation for his trial.

—It is too early to determine if a national consensus has emerged against the execution of a person with intellectual disabilities. The average length of time that the 16 states have had their laws banning the execution of people with intellectual disabilities is five years. Five years is not a significant amount of time to determine if the laws are truly reflective of a change in the values of society. Also, in a number of the states the law only pertains to those individuals who commit a crime after the date the bill was signed into law. In those states the people with intellectual disabilities can be executed if they were in the criminal justice system when the law passed.

—The Court cannot go back and reverse the decision once it has been made. States will not be able to pass legislation executing people with intellectual disabilities because the Court has prohibited it. Therefore, it would be nearly impossible to prove that the national consensus has changed again. It is very serious for the Supreme Court to find a new consensus because the Court is saying that the Constitution means something different than it did before.

—There is nothing wrong with executing people with intellectual disabilities. People with intellectual disabilities understand the difference between right and wrong. They know that if they commit a crime there is a punishment for that crime. People with intellectual disabilities are competent to stand trial and they are able to assist in their own defense. In some cases a defendant's intellectual disabilities may make the individual less accountable for their actions. In those cases the jury can decide to give a lighter sentence. The jury has the ability to decide a sentence and take into account important facts about the defendant. This should be done on a case by case basis. There are crimes so horrible that a death sentence is warranted even if the defendant has an intellectual disability. In some instances, society is in danger if the defendant is ever released from prison.

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