

who, as a result of “more than minimal exposure to alcohol during gestation,” have impairments in self-regulation, and neurocognitive and adaptive functioning (DSM-5, p 798).

It is unclear if the term FASD or ND-PAE was most applicable for Mr. Soliz. Either way, throughout the course of the case, Mr. Soliz never was classified as having ID, preventing him from successfully moving forward with an *Atkins* claim.

As it stands, then, ID remains the sole medical diagnosis exempting a criminal defendant from the death penalty. Conditions causing behavioral deficits not rising to the level required for an *Atkins* claim must be raised as mitigating factors. Diagnoses such as ND-PAE and FASD should be brought out via expert testimony for jury consideration.

Challenge to the Death Penalty

Pratik Bahekar, MBBS

Fellow in Forensic Psychiatry

Clarence Watson, JD, MD

Director, Forensic Psychiatry Fellowship

Clinical Associate Professor of Psychiatry

Perelman School of Medicine

University of Pennsylvania

Philadelphia, Pennsylvania

U.S. Supreme Court Vacates Decision by the Sixth Circuit for Death Row Inmate Who Sought Habeas Relief

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In *Shoop v. Hill*, 139 S. Ct. 504 (2019), the U.S. Supreme Court vacated and remanded a Sixth Circuit appellate court’s decision to grant *habeas* relief for a respondent who argued that his death penalty sentence was contrary to clearly established federal law due to his intellectual disability. In reaching its decision, the Court rejected the respondent’s assertion that lower courts’ decisions overemphasized his adaptive strengths in a controlled environment in finding that he was not intellectually disabled. Further, the Court held that the Sixth Circuit appellate court erred in relying on case law that had not been established at the time relevant to the respondent’s claim.

Facts of the Case

In September 1985, Raymond Fife, a 12-year-old boy, left home on his bicycle to visit a friend. When Raymond did not return home, his parents began a search, and his father eventually found him naked, beaten, and burned in a wooded field. Although he was hospitalized, Raymond died from his injuries two days later. Subsequently, Danny Hill, age 18, appeared at a local police department and inquired about a reward for information regarding the crime. Police determined that Mr. Hill knew more information than was publicly available. Eventually, Mr. Hill admitted to his involvement in the murder.

In 1986, Mr. Hill was convicted. The court opinion from the Sixth Circuit, *Hill v. Anderson*, 300 F.3d 679 (6th Cir. 2002), summarizes his sentencing, which reveals that a mitigation hearing was held to determine whether he would receive the death penalty. During the mitigation hearing, three psychologists testified that Mr. Hill was intellectually disabled. The aggravating circumstances outweighed Mr. Hill’s mitigating factors, and he was sentenced to death.

An intermediate appellate court and the Ohio Supreme Court affirmed his conviction and sentence, and the U.S. Supreme Court denied *certiorari* in 1993. After unsuccessful petitions to state and federal courts for postconviction relief, he petitioned the Ohio courts arguing that under *Atkins v. Virginia*, 536 U.S. 304 (2002), his death sentence should be invalidated. In 2006, the Ohio trial court found that Mr. Hill was not intellectually disabled due to his adaptive strengths and denied Mr. Hill’s claim. In 2008, the Ohio Court of Appeals affirmed the denial, and in 2009, the Ohio Supreme Court denied review.

In 2010, Mr. Hill filed a new federal *habeas* petition under 28 U.S.C. § 2254 (1996), seeking review of the Ohio courts’ denial of his *Atkins* claim. Following a denial by the district court, the Sixth Circuit Court of Appeals reversed and granted *habeas* relief under § 2254(d)(1), which applies to a state court’s decision that was contrary to, or was an unreasonable application of, clearly established federal law at the time of the decision. In granting *habeas* relief, the Sixth Circuit stated that the Ohio courts erred by relying too heavily on Mr. Hill’s adaptive strengths in the controlled environment of a death-row prison cell. In reaching its ruling, the court relied on the U.S. Supreme Court’s decision in

Moore v. Texas, 137 S.Ct. 1039 (2017). *Moore* held that a Texas appellate court improperly evaluated a petitioner's adaptive functioning by overemphasizing his perceived adaptive strengths and by overly focusing on the petitioner's improved behavior in prison, despite the medical community's expressed caution about relying on adaptive strengths developed in controlled environments.

While the Sixth Circuit acknowledged that the 2017 *Moore* decision postdated the Ohio courts' denials of Mr. Hill's *Atkins* claim, that court reasoned that the *Moore* decision regarding adaptive strengths was essentially an application of federal law already established in *Atkins*. The state appealed and argued that the Sixth Circuit's decision violated § 2254(d)(1) because it relied on *Moore*, which was decided years after the Ohio courts' decisions and did not represent clearly established federal law within the relevant timeframe. In response, Mr. Hill argued that *Moore* simply elucidated the law clearly established in *Atkins* in relation to the assessment of adaptive skills.

Ruling and Reasoning

The U.S. Supreme Court ruled that the Sixth Circuit improperly relied on its 2017 decision in *Moore* in granting Mr. Hill's *habeas* relief claim under § 2254(d)(1). Consequently, the circuit court's judgment was vacated and remanded for further proceedings. In reaching its conclusion, the U.S. Supreme Court pointed out that federal *habeas* relief under 28 U.S.C. § 2254(d)(1) may only be granted if a state court reached a decision that was contrary to, or involved an unreasonable application of, Supreme Court precedent that was clearly established at the time of the decision. Accordingly, the Court focused on clearly established precedent at the time of the Ohio Court of Appeals' denial of Mr. Hill's *Atkins* claim in 2008.

The Court pointed out that, while the *Atkins* ruling in 2002 prohibited death sentences for individuals with an intellectual disability, it did not establish a definition of intellectual disability for constitutional analysis. The Court explained that the *Atkins* opinion merely noted that the definitions utilized by the American Association on Mental Retardation and the American Psychiatric Association required subaverage intellectual functioning and significant limitations in adaptive skills before age 18. Further, the Court noted that state statutory definitions regarding

intellectual disability that were established at the time generally conformed to those clinical definitions. The Court tasked state jurisdictions with developing appropriate methods to comply with the *Atkins* ruling.

The Court emphasized that, more than a decade after *Atkins*, it had expounded on the definition of intellectual disability in *Hall v. Florida*, 572 U.S. 701 (2014) and in *Moore*. In *Hall*, the Court rejected a rule restricting *Atkins* relief to defendants with an IQ test score of 70 or less because it prevented consideration of other evidence of intellectual disability, including adaptive deficits. In *Moore*, the Court found that the Texas Court of Criminal Appeals improperly evaluated a petitioner's adaptive functioning and erred in concluding that a petitioner's IQ scores, some of which were below 70, established that he was not intellectually disabled.

In this case, the Court rejected the Sixth Circuit's reasoning that *Moore* was merely an application of what had already been clearly established by *Atkins*, as *Atkins* did not provide a definition for intellectual disability and only briefly commented on definitions by professional clinical organizations. The Court further noted that *Atkins* did not resolve how limitations in adaptive skills were to be assessed, and it deferred that task to state jurisdictions. Finally, the Court highlighted that *Moore* primarily relied on medical literature that postdated the Ohio courts' decisions on Mr. Hill's *Atkins* claim. As a result, the Court vacated and remanded due to the lower court's heavy and improper reliance on *Moore*. The case was remanded so that Mr. Hill's intellectual disability could be assessed in light of court holdings established at the relevant time.

Discussion

While the *Hill* decision turned on whether the Ohio Court of Appeals' denial of Mr. Hill's *Atkins* claim violated clearly established federal law at the time of the decision, two important points should be drawn from the case. First, clinically accepted definitions of mental health disorders may vary from, and may not be sufficient to satisfy, legal definitions that are intended to address legal questions that arise when the law intersects with mental health concerns. This tension is exemplified in insanity cases, where there is a legal standard for the purpose of reducing criminal culpability which is not synonymous with the medical community's definitions and

understanding of the nature of mental illness. Second, it is critical that mental health evaluators, who provide clinical assessments in legal matters, remain keenly aware of the relevant legal definitions and elements involved in those matters. Providing clinical opinions to the court that overlook relevant legal requirements regarding mental concepts may result in the inadmissibility of the expert evaluator's opinion and, ultimately, may hamper the court's effort toward a just resolution.

Of course, an expert's involvement in a capital punishment matter carries particularly high stakes, where a convicted defendant faces the ultimate

penalty. Given that capital punishment cases are often adjudicated over the course of many years, the evolving nature of medical sciences and diagnostic formulations can pose significant challenges for both the courts and evaluators. Accordingly, it is important that evaluators remain familiar with the advances in diagnostic formulations and assessments to appropriately guide courts in reaching well-reasoned and well-informed decisions. In the case of assessing intellectual disability in capital defendants, the proper evaluation of intellectual and adaptive functioning and the ability to translate those clinical findings into relevant jurisdictional legal standards may make the difference between life and death.

E R R A T U M

In the March 2020 issue of *The Journal* (48:1, pp 143-4), we acknowledged our colleagues who have conducted peer review for *The Journal* during 2016–2019. The individuals listed below should also have been included in that recognition. We offer our sincere apologies to each of our colleagues for this error and affirm our appreciation for their efforts on behalf of *The Journal*.

Jessica Abellard
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