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THOMAS F. SIMON
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June 29, 2009

Mr. Stephen D. Hawke
Office of Missouri Attorney General
P.O. Box 899
Jefferson City, MO 65102

Mr. Frederick A. Duchardt, Jr.
P.O. Box 216
Trimble, MO 64492

In Re: State ex rel. Andrew Lyons, Petitioner, vs. Larry Crawford and Jeremiah Nixon,
Respondents.
Missouri Supreme Court No. SC88625

Dear Counsel:

Please be advised the Court issued the following order on this date in the above-entitled cause:

“Briefing schedule activated pursuant to Rule 84.24(i).”

Very truly yours,

THOMAS F. SIMON

Cynthia L. Turley
Deputy Clerk, Court en Banc

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Circuit Court of St. Louis County

DIVISION 16
FAMILY COURT CENTER
501 S. BRENTWOOD BLVD.
CLAYTON, MISSOURI 63105

MICHAEL D. BURTON
ADMINISTRATIVE JUDGE
OF THE FAMILY COURT
(314) 615-1516

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CLERK, SUPREME COURT

June 12, 2009

Dear Cynthia,

Here is the second report, in response to respondent's exceptions to March 12, 2009 report from Judge Michael Burton.

Michael D. Burton

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IN THE SUPREME COURT OF MISSOURI

FILED

MAY 29 2009

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

STATE EX REL. ANDREW LYONS)
)
 Petitioner)
)
 v.)
)
 LARRY CRAWFORD and)
)
 JEREMIAH NIXON)
)
 Respondents)

Case #88625

FILED
JUN 15 2009
Thomas F. Simon
CLERK, SUPREME COURT

REPORT OF SPECIAL MASTER
(IN RESPONSE TO RESPONDENT'S EXCEPTIONS TO MARCH 12, 2009 REPORT)

Pursuant to the Missouri Supreme Court's directives, this Special Master, on March 12, 2009, issued a report, findings of fact and conclusions of law on the issue of whether Petitioner, Andrew Lyons, is mentally retarded as defined in Section 565.030.6, R.S.Mo.2000. On April 15, 2009, Respondents filed exceptions to the report. On May 6, 2009, Petitioner filed his response. This Master finds as follows:

1. The methodology for the tests conducted by Dr. Fucetola, Petitioner's expert, in 2007, and Dr. Cowan in 2002, were not challenged in any way whatsoever by Respondents' expert, Dr. Kline. Both of these tests indicated that Petitioner is mildly mentally retarded, having significantly subaverage intellectual functioning.

2. Dr. Fucetola offered a consistent and credible explanation as to how Petitioner could have received test results in 1992 and 1998 that reflected slightly higher (i.e., arguably non-mentally retarded) I.Q. scores. He credibly addressed factors that accounted for the necessity of reducing these scores (e.g., the Flynn Effect, the seemingly arbitrary cause for increasing an I.Q. score when a participant attains the age of 35 years old, etc...). Respondents' suggestion that the

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Flynn Effect is not widely accepted in the scientific community is unfounded.

3. Dr. Kline could not offer any plausible explanations for such apparent inconsistencies. Respondents suggested dementia, depression and malingering. During cross-examination, Kline conceded that the records do not support any of these possibilities – and indeed ultimately admitted that they most likely were not present.

4. After consideration of all of the testimony, this Master found, and still finds, that Petitioner has proven that he has an I.Q. score within the mentally retarded range, demonstrating his significantly subaverage intellectual functioning.

5. Respondents also maintain that this Master did not connect his findings of Petitioner’s “continual extensive deficits and limitations” in certain behaviors to his significantly subaverage intellectual functioning. This Master repeatedly found there to be continual extensive **related** deficits and limitations – most notably in the areas of communication and functional academics (emphasis added). Looking at the statutory language, the only plausible term that “relates” to Petitioner’s deficits and limitations is his “significantly subaverage intellectual functioning.” Logic defies any other interpretation. However, if this Master did not artfully make the connection clear in his prior report, he wishes to do so now: Petitioner’s continual extensive deficits and limitations stem from his significantly subaverage intellectual functioning.

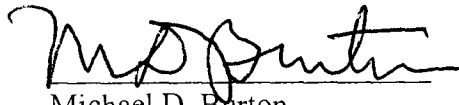
6. Lastly, this Master finds that evidence of Petitioner’s “significantly subaverage intellectual functioning” and “continual extensive related deficits and limitations” were manifested and documented before Petitioner turned eighteen years old. His family and his school records support this finding.

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Conclusion

As stated before, Petitioner has met his burden of proof. First, he established by a preponderance of the evidence that he had significantly subaverage intellectual functioning – through Dr. Fucetola’s evaluation (and his logical explanation of other evaluations). Second, Petitioner established that, by a preponderance of the evidence, he had suffered continual extensive related deficits and limitations in at least two adaptive behaviors – most notably in communication and functional academics. These deficits and limitations were caused by his significantly subaverage intellectual functioning. All such functioning, deficits and limitations were manifested and documented before Petitioner’s eighteenth birthday. This Master reiterates that Petitioner, therefore, is mentally retarded as defined in Section 565.030.6, R.S.Mo.

Respectfully submitted,



Michael D. Burton
Special Master

May 29, 2009

Cc: Frederick A. Duchardt, Jr.
Attorney for Petitioner

Stephen D. Hawke
Assistant Attorney General