

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CRS 20841

STATE OF NORTH CAROLINA

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MEMORANDUM OF

VS.

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DECISION

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ANTOIN JERROD WATKINS

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THIS MATTER came on for hearing before the undersigned Superior Court Judge on December 12th and 13th, 2011. The Defendant was present with his attorneys; Joseph E. Zeszotarski and A. Jackson Warmack, Jr. The State was represented by Assistant District Attorneys Christy Joyce and Philip Cowan.

The Defendant in this case has been charged with First Degree Murder, and the State has announced its intention to seek the Death Penalty if he is convicted of that offense. On February 15, 2010 the Defendant filed a Motion for a Pretrial Hearing to determine that Defendant is Mentally Retarded pursuant to N.C. Gen. Stat. §15A-2005(c). The State has not consented to that hearing. This Court entered an order granting the Defendants request for a pretrial hearing on August 12, 2011.

It is well established law that the execution of any mentally retarded person violates the Eighth Amendment's prohibition against cruel and unusual punishment. See *Atkins v. Virginia*, 536 U.S. 304 (2002), *State v. Poindexter*, 359 N.C. 287 (2005) and *State v. Locklear*, 363 N.C. 438. In addition, N.C. Gen. Stat. §15A-2005(b) states "Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death."

Our statutes further define mentally retarded as significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18. *N.C. Gen. Stat. §15A-2005(a) (1) a.*

SIGNIFICANTLY SUBAVERAGE GENERAL INTELLECTUAL FUNCTIONING

Significantly subaverage general intellectual functioning is an intelligence quotient of 70 or below. (*N. C. Gen. Stat. §15A-2005(a) (1)c.*) An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning. (*N.C. Gen. Stat. §15A-2005(2).*)

The Defendant was born on March 6, 1982 in Wake County. He was enrolled in Wake County Public Schools in the fall of 1987. Within months, he was identified by his teacher and school administrators as needing evaluation and assessment related to apparent developmental delays. The Defendant was referred to Project Enlightenment for services to address his developmental issues.

In February of 1991 the Defendant was administered the Wechsler Intelligence Scale for Children-Revised (WISC-R) to assess his current level of intellectual functioning. This test was administered by Wake County Public Schools personnel. The Defendants reported Full Scale IQ was an 80, with a verbal IQ of 79 and a Performance IQ of 84. There are two significant factors related to this test result. First, the Defendant became “very stubborn and whiny” and the testing was stopped. The testing was resumed on a second day. The Performance IQ was prorated without coding because of the Defendants refusal to participate. Second, the WISC-R was outdated at the time of test administration. The newest version of the WISC series, the WISC-III, had recently been released at the time of test administration. This test appears to have been administered by a qualified licensed psychiatrist or psychologist.

In October of 1993 the Defendant was again tested by the Wake County Public Schools personnel for intellectual functioning. The WISC-III was administered and he scored a Verbal IQ score of 67, Performance IQ score of 68, and Full Scale IQ score of 65.

On September 10, 2009 the Defendant was again administered tests to assess his intellectual functioning. This testing was administered by Dr. James Hilkey, Ph.D., a licensed forensic psychologist. Dr. Hilkey administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV) and the Test of Memory Malingering (TOMM). There were no indications of malingering. On the WAIS-IV the Defendant had a Full Scale IQ score of 65. This test appears to have been administered by a qualified licensed psychiatrist or psychologist. The Full Scale IQ score of 65 that was reported is incorrect. A scoring error was made and the correct Full Scale IQ score is 67.

SIGNIFICANT LIMITATIONS IN ADAPTIVE FUNCTIONING

In addition to significantly subaverage general intellectual functioning the law requires the existence of significant limitations in adaptive functioning, specifically deficits in two or more adaptive skills areas. These skill areas are: communication, self-care, home living, social skills, community use, self direction, health and safety, functional academics, leisure skills, and work skills. (N.C. Gen. Stat. §15A-2005(a) (1)b.)

In this matter the defendant contends that he is deficient in six adaptive skill areas: functional academics, home living, work skills, self direction, communication, and social skills. The Defendant’s adaptive functioning was assessed by Dr. Kristine Herfkens, PhD a licensed psychologist utilizing the Vineland Adaptive Behavior Scales-II and Dr. Ginger C. Calloway PhD., a licensed psychologist utilizing the Adaptive Behavior Assessment System, 2nd Edition (ABAS-II). Both the ABAS-II and the

Vineland are widely accepted and recognized evaluation tools in the psychological testing profession.

With respect to functional academics, the Defendant was identified at a very early stage of his formal education as a child with special needs and various developmental delays. Project Enlightenment provided services to address speech and language deficiencies. An Individual Education Program (IEP) was developed and implemented. The Defendant consistently performed poorly and made little academic progress. He often failed to complete his assignments and participate in classroom activities and his behavior was “markedly different from his peers”. The Defendant’s behavioral issues negatively impacted his ability to participate in the learning process. The Defendant has significant limitations in the adaptive skill area of functional academics.

With respect to the defendant’s adaptive skills in home living, he has never lived independently. His lack of home living skills is evidenced by his inability to cook anything more than the simplest food. He has not maintained a bank account or driver’s license. He has purchased a vehicle and attempted to negotiate the sale of that vehicle.

The defendant contends that he has significant limitations in the adaptive skill area of work skills. The record is clear that the Defendant has not held a traditional full or part-time job in the community. His interviewing skills are minimal; he lacks job skills and does not engage in appropriate social behavior. The Defendant has supported himself by selling drugs and there is some evidence that he has held temporary menial jobs.

Regarding the adaptive skill area of self-direction, the Defendant continually exhibits a limited ability to make appropriate choices and follow through. He expressed that his life goal or plan was “to have a girlfriend and children”. He has no plan for a legitimate job or career. He has continually made choices and engaged in activities that were inappropriate and contrary to his personal interests; his extensive criminal history is evidence of that. His school records contain multiple references to his refusal to participate and inability to resolve problems when confronted. The Defendant has significant limitations in the adaptive skill area of self-direction.

Regarding the Defendant’s communication skills; at a very early stage of his education his teachers identified speech, language and articulation deficiencies and delays. He has exhibited an ongoing difficulty in understanding questions. His responses to specific questions were often nonresponsive or rambling off the subject. The Defendant relied upon others to assist him with tasks in school as well as at C.A. Dillon. The Defendant often copied other children when it was apparent that he lacked independent understanding of directions. The Defendant’s speech contains excessive profanities and expletives and is very difficult to understand and follow. The Defendant has significant limitations in the adaptive skill area of communication skills.

The Defendant contends that he has a significant limitation in the adaptive skill area of social skills. There is some evidence that the defendant is a “follower” and is

“easily led”. He openly bragged to law-enforcement officers that he was a drug dealer. He did not participate in class, often walking out.

CONCLUSION

Based upon the foregoing, the court finds that:

(1) The Defendant has shown by clear and convincing evidence that the Defendant has significantly subaverage intellectual functioning. In making this determination, this court has considered the 1991 administration of the WISC-R and the resulting reported score of 80, however due to the manner in which the test was administered and scored and the fact that it was an outdated version, the result is not given any weight. The 1993 WISC-III and 2009 WAIS-IV results constitute clear and convincing evidence of the Defendants significantly subaverage intellectual functioning.

(2) The Defendant has shown by clear and convincing evidence that the Defendant’s significantly subaverage intellectual functioning manifested prior to the Defendant’s 18th birthday.

(3) The Defendant has shown by clear and convincing evidence the existence of significant limitations in the adaptive skill areas of functional academics, self-direction, and communication skills. These significant limitations existed prior to the Defendant’s 18th birthday.

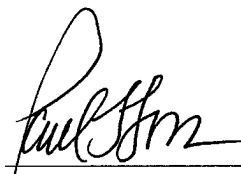
Based on the foregoing the court concludes as a matter of law that:

(1) The Defendant is mentally retarded as defined by N.C. Gen. Stat. §15A-2005(a) (1) a.

(2) Pursuant to N.C. Gen. Stat. §15A-2005(c), the Court declares this matter to be noncapital,

(3) In view of the foregoing, and the State may not seek the death penalty against the defendant.

SO ORDERED, this the 29th day of December, 2011.



Paul G. Gessner
Resident Superior Court Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached ORDER in the above titled action upon all parties to this cause by:

Hand delivering a copy hereof to each said party or the attorney thereof, or;

Transmitting a copy hereof to each said party via e-mail; or

Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

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Wake County Courthouse

This the 29th day of December, 2011.



Paul G. Gessner
Resident Superior Court Judge