

IN THE SUPREME COURT OF FLORIDA

ANTONIO M. CARTER,)
)
 Appellant,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 71,714

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APPEAL FROM THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY
FLORIDA

SUPPLEMENTAL INITIAL BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
112-A Orange Avenue
Daytona Beach, Florida 32014
(904)252-3367

ATTORNEY FOR APPELLANT

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POINT XI

ANTONIO CARTER'S DEATH SENTENCE IS
UNCONSTITUTIONAL AND DISPROPORTIONATE
UNDER THE EIGHTH AND FOURTEENTH AMEND-
MENTS TO THE UNITED STATES CONSTITUTION,
WHERE THE EVIDENCE ESTABLISHED THAT
CARTER IS MENTALLY RETARDED.

Four mental health experts examined Antonio Carter in order to determine his competency to stand trial. Appellant submits that the evidence is relatively clear and unrefuted that Carter suffers from mental retardation. Doctor Krop's examination included psychological testing. (R425) Krop concluded that Carter had a I.Q. of 73 placing him in the lowest two and one-half percent of the general population. (R429) Krop classified Carter as border-line mentally retarded. (R430-431) Doctor Barnard also concluded that Carter was retarded. (R495) Doctor Mhatre also agreed with this conclusion. (R412-415) Only Doctor Davis concluded that Carter is of average or above average intelligence. (R43) Davis based this conclusion on questions involving the intellectual process. However, when pressed, Davis could not remember what those questions were. (R483) Davis did not conduct any quantitative tests during his examination of Carter.

Appellant submits that the evidence of his mental retardation is practically unrefuted. This evidence arose during the hearing on Appellant's motion relating to his competency to stand trial. Appellant concedes that this evidence was not presented at the guilt or the penalty phase of the trial. However, it remains clear that the trial court was certainly

aware of this evidence when the court sentenced Antonio Carter to death.

Appellant submits that his death sentence was unconstitutionally imposed. Appellant submits that it is cruel and unusual punishment to execute an individual who has been diagnosed as border-line mentally retarded with an I.Q. of 73. Amends. VIII and XIV, U.S. Const.; Thompson v. Oklahoma, 43 CrL 3197, June 29, 1988. Although Thompson dealt with the execution of juveniles, the focus of the Court's rationale was the lesser culpability of the juvenile offender as a result of his diminished capacity to control his conduct and to think in long-range terms.


Additionally, the issue involving the constitutionality of a death sentence imposed on a mentally retarded person is currently pending before the United States Supreme Court in Penry v. Lynaugh, 43 CrL 4084, cert. granted June 30, 1988. Appellant requests that this Court declare his death sentence to be unconstitutionally imposed in light of the clear and convincing evidence that he is mentally retarded.

CONCLUSION

Based upon the foregoing cases, authorities and policies, Appellant requests that this Court declare Appellant's death sentence to be unconstitutional in light of the clear and convincing evidence that Antonio Carter is mentally retarded.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT


CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
112-A Orange Avenue
Daytona Beach, Fla. 32014
(904)252-3367

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 125 N. Ridgewood Avenue, 4th floor, Daytona Beach, Fla. 32014 in his basket at the Fifth District Court of Appeal and mailed to Mr. Antonio Carter, #068601, P.O. Box 747, Starke, Fla. 32091 on this 17th day of August 1988.


CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER