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IN THE SUPREME COURT OF FLORIDA

SONNY BOY OATS, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC12-749

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA

SUPPLEMENTAL ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

This case originates from Oats claiming to be intellectually disabled.[1] Oats filed his original motion in March of 2002, subsequent to the United States Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 305 (2002). The evidentiary hearing occurred in September of 2010 and June of 2011. After the trial court denied Oats's claim, this appeal followed. The original briefing was completed in this case in March, June, and July of 2013. On July 2, 2014, following the United States Supreme Court's decision in *Hall v. Florida*, 134 S.Ct. 1986 (2014), this Court ordered supplemental briefing from the parties to address the applicability of *Hall*, if any, to Oats's case. Oats filed his supplemental initial brief on July 17, 2014. This supplemental answer follows.

STATEMENT OF THE FACTS

In its original answer brief filed on June 24, 2013, the State provided a detailed recitation of the factual history as well as the evidentiary hearing facts relevant to the merits of the intellectual disability claim and the trial court's

[1] At the time of Oats's evidentiary hearing in 2010 and 2011, the formal diagnosis under the Diagnostic and Statistical Manual, Fourth Edition, Text Revised (DSM-IV-TR) was mental retardation. The latest edition of the DSM, the DSM-V, has replaced mental retardation with intellectual disability. The motion for post-conviction relief, the testimony in 2010 and 2011, and the original briefing all use the terms mental retardation. Like the Court in *Hall*, this pleading will refer to mental retardation as intellectual disability.

findings. The State relies on the facts articulated in the original answer brief. In his supplemental initial brief, Oats reengaged in a detailed discussion of the facts from the evidentiary hearing in this case. The State submits, as will be discussed further below, that detailed factual discussion from the evidentiary hearing is not necessary in determining whether or not *Hall* is applicable to this case.

SUMMARY OF THE ARGUMENT

Bottom line up front: *Hall* is not applicable to the claim that Oats is intellectually disabled. *Hall* did not invalidate Florida's statute or rule defining intellectual disability. While the medical community's standards cannot be ignored, those standards do not usurp the statute and automatically become the law. *Hall* did not change the burden of proof required for Oats to establish his claim; in fact, *Hall* does not discuss burden of proof at all. Oats—who has attained scores below the now-unconstitutional bright-line cutoff score of 70 addressed in *Hall*—actually presented evidence on the second and third prongs of intellectual disability. Oats received what *Hall* did not; that is, an opportunity to present and consideration by the trial court of all three prongs of intellectual disability. *Hall* does not affect this Court's ability to evaluate the trial court's findings on each of the three prongs of intellectual disability. The *Hall* decision does nothing to change the landscape of the intellectual disability claim currently before the Court. Oats received that which *Hall* requires, and the inquiry ends there.

ARGUMENT

WHETHER THE UNITED STATES SUPREME COURT'S RECENT DECISION IN *HALL V. FLORIDA*, 134 S.CT. 1986 (2014), APPLIES TO OR AFFECTS APPELLANT'S CLAIM OF INTELLECTUAL DISABILITY

HALL v. FLORIDA

In *Hall*, the Supreme Court held that Florida's interpretation of its statute defining intellectual disability was unconstitutional and may result in a violation of *Atkins v. Virginia*, 536 U.S. 304 (2002). Essentially, *Hall* holds that the standard error of measurement (the SEM, which is plus or minus five points) for IQ scores—most commonly from the Wechsler Adult Intelligence Scale (WAIS)[2]—be taken into account when evaluating the first prong of intellectual disability.[3] Thus, a defendant with a score of 71-75 must be permitted to present and have considered evidence concerning the second two factors in the definition of intellectual disability; concurrent deficiency in adaptive functioning and onset prior

[2] The WAIS is currently on its fourth edition, WAIS-IV. The previous WAIS tests that Oats has taken are from the WASI-III or the Wechsler Intelligence Scale for Children (WISC) or the WISC-Revised. The Wechsler tests as well as the Stanford-Binet Intelligence Scale are the two acceptable intelligence tests under Florida Law. Fla. R. Crim. Pro. 3.203; Fla. Admin. Code Ann. r. 65G-4.011.

[3] The first element of intellectual disability under the statute and the rule is, "significantly subaverage general intellectual functioning." Section 921.137(1), Fla. Stat.; Fla. R. Crim Pro. 3.203(b). Throughout his brief, Oats incorrectly references the first element of intellectual disability as "subaverage intellect." Oats's shorthand version of the first element is an incorrect statement of the law; law that was not changed by *Hall*.

to age eighteen. *Hall* did not change or affect any other aspect of the intellectual disability determination.

As a preliminary matter, the State must address a line in the factual discussion from the initial supplemental brief (ISB). Oats referenced a written memorandum from his evidentiary hearing in 1990 wherein the State agreed that Oats fell within the mildly mentally retarded area. Oats then stated, "To be clear, on the record, in writing, in this case, the State of Florida has unequivocally conceded, indeed with 'no doubt,' that Mr. Oats is ID, yet still seeks his execution, despite its sworn obligation to uphold the Constitution, which includes the Eighth Amendment prohibition against executing ID individuals." (ISB at 5-6). Oats's statement is grandiose. In 1990, long before *Atkins*, the State often did not contest claims of intellectual disability. In those days, the State's "concession" that a defendant was intellectually disabled was no different than the State conceding in a case today that a defendant suffered from physical abuse as a child, was mentally or emotionally distressed, or had suffered a traumatic head injury. Before *Atkins*, intellectual disability was mitigation to be weighed, not a bar to execution. As Justice Pariente pointed out in this Court's *Hall* decision,

> In *Atkins*, the United States Supreme Court dramatically changed the legal landscape pertaining to mental retardation and death penalty jurisprudence.
> …

> [T]he circumstances in 1991 were different. In 1991, *Hall*'s evidence went unchallenged, whereas in 2010, there was a true adversarial testing of whether *Hall* was mentally retarded under Florida's statutory definition of mental retardation. In contrast to the 2010 postconviction hearing, during *Hall*'s 1991 resentencing, the State did not contest the evidence *Hall* presented, but instead relied on its own evidence to establish seven strong aggravators to outweigh the mitigators.
>
> Although the State in 1991 did not contest whether *Hall* suffered from mental retardation, the trial court noted throughout the sentencing order that it was troubled as to whether the mental health experts presented by the defendant had exaggerated *Hall*'s inabilities. The trial court made certain statements throughout the sentencing order that questioned whether *Hall* suffered from mental retardation, including an in-depth discussion as to whether his behavior and abilities were consistent with a person who had mental retardation.

Hall v. State, 109 So. 3d 704, 712 (Fla. 2012) (Pariente, J. concurring). Those observations apply to Oats as well. The United States Supreme Court's decision did nothing to disturb those circumstances. *See also Bobby v. Bies*, 556 U.S. 825 (2009) (upholding the constitutionality of a death sentence in light of a post-*Atkins* determination that the defendant was not intellectually disabled despite a conclusive finding that defendant was mentally retarded for mitigation purposes when sentence was initially imposed prior to *Atkins*).

The Decision in *Hall v. Florida* Does Not Apply to Oats

First, *Hall* does not apply to Oats's case. *Hall* did not create a new constitutional right. *Atkins* created the constitutional right. *Hall* is an application of *Atkins* to the particular facts of Hall's case. 134 S.Ct. at 1990. *Hall* does not provide Oats with a new substantive claim. *Hall* did not invalidate the Florida

statute or court rules regarding intellectual disability, it held only that Florida's standard had been unconstitutionally applied *on the facts of that particular case*. *Id*. at 1994 ("On its face, the Florida statute could be consistent with…*Atkins*). The finding in *Hall* that Florida had unconstitutionally applied the standard for a determination of intellectual disability in that case does not assist Oats. The Supreme Court held that Florida should not have precluded *Hall* from presenting and receiving consideration of other evidence of his intellectual disability based solely on a score of 71. Oats, of course, has never been precluded from presenting any evidence of his intellectual disability claim. Oats had documented scores below the 70 cutoff that was preventing *Hall* from receiving consideration of the other two prongs. Oats received a full hearing in 2010 and 2011 and both parties presented evidence as to all three prongs of the intellectual disability statute. Thus, *Hall* is of no benefit to Oats.

Oats admits that the holding in *Hall* "is not necessary to this case, because Mr. Oats has numerous IQ scores, all below the 70 threshold." (ISB at 16, n.12). Oats also tacitly admits that *Hall* has no bearing on the standard of review in this case. Oats's discussion of the standard of review is devoid of any mention of *Hall*. (ISB at 17). In subsequent discussion, Oats again admits that *Hall* is inapplicable, "Mr. Oats argues that, though he should win without any reference to *Hall*…." (ISB at 21). Undoubtedly, *Hall* does not apply to Oats's case. This Court can

make its determination on the original briefing in this case; that is, whether the trial court abused its discretion in finding that Oats had not established by clear and convincing evidence his intellectual disability claim. The only reference to *Hall* that is necessary is to say that it does not apply.

Second, *Hall* did not require state legislatures and judiciaries to surrender statutory enactment and interpretation to the medical community. Oats equivocates on this point. In one breath he argues that in light of *Hall*, this Court should cast aside statutory construction and yield to whatever the medical community may say about intellectual disability. (ISB at 15) ("[T]his case is now not so much about statutory construction. Now the focus is on what the medical community standards require for finding early onset"). In another breath, Oats admits that *Hall* did not direct courts to abdicate statutory construction to the medical community. (ISB at 24) ("[T]he *Hall* Court was clear that the views of the medical community 'do not dictate the Court's decision'"). The latter is true, but Oats wants to have it both ways. Justice Kennedy, however, writing for the majority, made it clear:

> [An intellectual disability] determination is informed by the views of medical experts. These views do not dictate the Court's decision, yet the Court does not disregard these informed assessments. It is the Court's duty to interpret the Constitution, but it need not do so in isolation. The legal determination of intellectual disability is distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework.

Hall, 134 S. Ct. at 2000 (internal citations omitted). In fact, the High Court pointed out that Florida's statute, on its face, allows for a *statutory construction* that includes the SEM rather than the rigid cutoff.

> Indeed, the Florida Legislature, which passed the relevant legislation prior to *Atkins*, might well have believed that its law would not create a fixed cutoff at 70. The staff analysis accompanying the 2001 bill states that it "does not contain a set IQ level.... Two standard deviations from these tests is approximately a 70 IQ, although it can be extended up to 75." Fla. Senate Staff Analysis and Economic Impact Statement, CS/SB 238, p. 11 (Feb. 14, 2001).

Id. at 1998. *Hall* did not strip the Court of its judicial function. Statutory construction remains central to this Court's role in applying the facts of a case to the law.

Third, *Hall* did not disrupt the clear and convincing burden of proof established by section 921.137(4) of the Florida Statutes. In fact, the majority in *Hall* says nothing at all about burden of proof. Justice Alito even pointed out that the petitioner in *Hall* conceded that states are permitted to "assign to a defendant the burden of establishing intellectual disability." *Hall*, 134 S.Ct. at 2011 (Alito, J. dissenting). Nonetheless, from *Hall's* directive that courts should be *guided* by the medical standards, Oats fashions an argument that the standard applied by the trial court to the third prong in his case—whether competent evidence exists by clear and convincing proof whether intellectual disability traits manifested in Oats prior to age eighteen—is unconstitutional because the medical community does not

require a burden of proof for establishing the elements of intellectual disability. (ISB at 19). To follow Oats's logic to conclusion would mean that a defendant could establish intellectual disability by merely raising the claim and supporting it with paltry evidence. Oats's desired outcome would drive capital litigation into procedural gridlock.

Oats then argues that the State's expert, Dr. McClaren, departed from the medical standard when he opined that he did not find "compelling" or "credible" evidence of significantly subaverage IQ or deficient adaptive functioning prior to age eighteen. (ISB at 11). Oats argues that McClaren applied the statutory standard instead of the medical standard in rendering his opinion. From that argument, Oats asks for the Draconian sanction of striking Dr. McClaren's testimony. (ISB at 25).

Oats's argument about Dr. McClaren is shortsighted. If Oats wanted to argue about Dr. McClaren's credibility or the weight to be given his testimony because he believed McClaren departed from the standards of the professional community in rendering his opinion, then he should have done so. He did not. Instead Oats took the all-or-nothing approach and argued that McClaren's testimony is now inadmissible in light of *Hall*. But admissibility is not the issue. *See Chavez v. State*, 12 So. 3d 199 (Fla. 2009):

> Before an expert may render an opinion, the witness must satisfy a four-prong test of admissibility.…(1) whether the subject matter will assist the trier of fact in understanding the evidence or in determining a disputed fact, and (2) whether the witness is adequately qualified to

> express an opinion on the matter. Once these threshold determinations are affirmatively satisfied, two more requirements must be satisfied for the admission of expert opinion testimony. The expert opinion must apply to evidence presented during the hearing, and the danger of unfair prejudice must not substantially outweigh the probative value of the opinion.

Id. at 205. There is no question that a forensic psychologist will assist the Court in determining whether an individual is intellectually disabled. There is no question that Dr. McClaren possesses adequate education and experience in the field of forensic psychology to render an opinion in that field. Dr. McClaren recognized the DSM as the gold-standard treatise in the field. And Dr. McClaren expressed his expert opinion based on the criteria in the DSM and the evidence presented at the evidentiary hearing. Furthermore, the subject matter at issue with Dr. McClaren's testimony, forensic psychology, is hardly a novel scientific principal, theory, or methodology and therefore there is no need to delve into a *Frye*[4] analysis.

Dr. McClaren did not depart from the standard of the profession in rendering his opinion. He rendered his opinion based on the DSM and then bridged his findings into the statutory standard. What Dr. McClaren did in finding that there was no compelling or credible evidence of intellectual disability traits onset prior

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[4] *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The State notes that at the time of the evidentiary hearing in this case, *Frye* was the standard in Florida. Since then, Florida has adopted the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), standard. § 90.702, Fla. Stat. Ann. (Amended 2013); C. Ehrhardt, Florida Evidence § 702.3 (2014 Edition).

to age eighteen is no different than an expert opining that a defendant did or did not meet the statutory mental health mitigators. *See e.g. Stewart v. State*, 37 So. 3d 243, 252 (Fla. 2010) (Experts opined that Stewart's childhood trauma and his substance abuse resulted in Stewart having a substantially impaired capacity to conform his behavior to the requirements of the law at the time of the offense); *Lynch v. State*, 841 So. 2d 362, 367-68 (Fla. 2003) (Mental health expert concluded that appellant was under the influence of an extreme mental and emotional disturbance…and that his psychotic process substantially impaired his capacity to conform his conduct with the requirements of the law). Dr. McClaren did not depart from the standard of his professional field by rendering his opinion under the statutory standard.

At bottom, *Hall* did not allow the medical profession to commandeer the judiciary's role in statutory construction and *Hall* did not overturn Florida's burden of proof for establishing intellectual disability. Oats had IQ scores below the bright-line cutoff of 70 (unlike Hall) and actually presented evidence of the other two prongs, which was considered by the court below. Nothing from *Hall* affects this Court's ability to evaluate all three prongs under the appropriate standard of review. Oats uses *Hall* as a sounding board to perpetuate further argument on the merits of his intellectual disability claim. Because *Hall* does not apply to this case and does nothing to disrupt the standard of review or the burden of proof, the State

relies on its arguments submitted in the original answer brief regarding the merits of the claim and the trial court's findings.

CONCLUSION

WHEREFORE, the State submits that this Court should find *Hall v. Florida* inapplicable in this case and affirm the post-conviction trial court's denial of relief.

Respectfully submitted,

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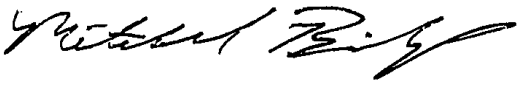
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2014, I filed the foregoing pleading using the E-Portal system which will generate a notice of filing to and electronically serve the document on the following: Martin J. McClain, Esquire, martymcclain@earthlink.net, 141 NE 30th St., Wilton Manors, FL 33334-1064; and M. Chance Meyer, Assistant CCRC-South, meyer@ccsr.state.fl.us, Capital Collateral Regional Counsel, 1 E. Broward Blvd. Ste. 444, Fort Lauderdale, FL 33301-1827.

/S/ 

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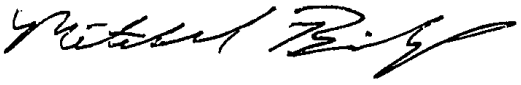
/S/ 

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