

**SYNOPSIS OF OPINION IN DEATH PENALTY CASE IN THE MISSISSIPPI SUPREME COURT HANDED DOWN June 1, 2017**

*State of Mississippi v. Kevin Scott*, NO. 2014-KA-00123-SCT (June 1, 2017)

**CASE:** DEATH PENALTY – POST CONVICTION Appeal by State from grant by Circuit Court of post-conviction relief from death sentence

**SENTENCE:** Death originally; vacated by circuit court in this action.

**COURT:** Circuit Court, Boliver County,

**TRIAL JUDGE:** Hon. Johnny Walls

**ATTORNEYS for Petitioner-Appellee Scott:** James W. Craig, Meghan Shapiro

**ATTORNEYS for State of Mississippi-Appellant:** Office of the Attorney General by Brad Alan Smith, Jason Davis

**DISPOSITION:** *En banc*. Judgment of trial court vacating death sentence affirmed. Case remanded for resentencing. Maxwell, J., for the Court. Waller, C.J., Dickinson and Randolph, P.JJ., Kitchens, King, Coleman, Beam and Chamberlin, JJ., concur.

**ISSUES:** Whether evidence supported trial court's conclusion that Scott is ineligible for a death sentence due to intellectual disability (ID). *Atkins v. Virginia* 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002).

**FACTS:** Scott was tried, convicted and sentenced to death for a capital murder committed in November 1995 when he was 18 years old. His trial occurred prior to the U.S. Supreme Court's decision in *Atkins* that the Eighth Amendment categorically prohibits death sentences for individuals who are intellectually disabled under the appropriate diagnostic criteria. After *Atkins*, Scott timely instituted post-conviction proceedings asserting ID, supported his petition with the requisite affidavits and a hearing was ordered. At the hearing, Scott supported his claim with the expert testimony of Phd-level clinical and forensic psychologist who evaluated Scott after *Atkins* and a masters level school psychologist who had IQ tested Scott before the crime of conviction occurred. Both opined that Scott was ID. Scott also supported his claim with lay testimony. The State offered the testimony of an expert who disagreed with Scott's experts' opinions. The State also challenged the qualifications of and/or the methods used by Scott's experts. The trial judge concluded that Scott had established intellectual disability by a preponderance of the evidence and vacated his death sentence.

**HELD:** All experts were properly qualified to testify as experts and employed appropriate methods. Trial court's determination of credibility and facts was supported by record and therefore entitled to deference on appeal. Claim that trial judge's opinion was not worthy of customary deference because it was mere parroting of proposed findings of the fact and conclusions of law prepared and submitted by Scott's counsel was found meritless. The State did not put any record before the Court to support that claim despite being given multiple opportunities to do so. The only sentence other than death for a capital murder committed by a person age 18 or older in Nov. 1995 is life in prison without the possibility of parole.

To read the full opinion, click here: <https://courts.ms.gov/Images/Opinions/CO121069.pdf>

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