

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

FILED

07/08/2025

Clerk of the  
Appellate Courts

**BYRON LEWIS BLACK v. STATE OF TENNESSEE**

**Criminal Court for Davidson County  
No. 88S1479**

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**No. M2004-01345-SC-R11-PD**

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**ORDER**

On July 1, 2025, Byron Lewis Black, a death-row inmate scheduled for execution on August 5, 2025, filed a motion to recall the March 2006 mandate that issued following his unsuccessful appeal from the trial court's determination that he is not intellectually disabled. Mr. Black contends the 2005 opinion is outdated and legally erroneous, and he insists he is intellectually disabled under the current intellectual disability definition. Mr. Black asks the Court to either withdraw the 2005 opinion or issue a certificate of commutation based on these extenuating circumstances. In its response, the State maintains that Mr. Black's intellectual disability claim has been fully litigated on the merits and that he has presented no extenuating circumstances to warrant recall of the mandate or issuance of a certificate of commutation. We agree with the State.

Tennessee Rule of Appellate Procedure 42(d) provides that this Court has the power to recall its mandate. Tenn. R. App. P. 42(d). However, recalling the mandate is "an extraordinary remedy and should be exercised sparingly." *State v. Smith*, 151 S.W.3d 533, 544 (Tenn. Crim. App. 2003), *perm. app. denied* (Tenn. Oct. 4, 2004) (quoting *State v. Abu-Ali Abdur'Rahman*, M1998-00026-SC-DPE-PD (Tenn. Apr. 5, 2002) (order)). The power to recall the mandate is "one of last resort, to be held in reserve against grave, unforeseen contingencies." *Id.* (quoting *Calderon v. Thompson*, 523 U.S. 538, 550 (1998)). Furthermore, the circumstances should be "sufficient to override the strong public policy that there should be an end to a case in litigation." *Id.* (quoting *Hines v. Royal Indem. Co.*, 253 F.2d 111, 114 (6th Cir. 1958)).

Mr. Black pursued an intellectual disability claim after this Court and the United States Supreme Court held that an intellectually disabled (formerly "mentally retarded") person is categorically ineligible for the death penalty. *Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001); *Atkins v. Virginia*, 536 U.S. 304 (2002). After a hearing, the trial court

determined that Mr. Black failed to establish he is intellectually disabled. The Court of Criminal Appeals affirmed, and this Court denied Mr. Black's application for permission to appeal. *Black v. State*, No. M2004-01345-CCA-R3-PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005), *perm. app. denied* (Tenn. Feb. 21, 2006), *cert. denied*, *Black v. Tennessee*, 549 U.S. 852 (2006). The mandate issued on March 8, 2006.

Almost twenty years later, Mr. Black is seeking to recall the mandate on the eve of his scheduled execution and relitigate his intellectual disability claim. Mr. Black's core premise is that the 2005 decision is based on an intellectual disability definition that has been upended by subsequent decisions of this Court and the United States Supreme Court, initially citing *Coleman v. State*, 341 S.W.3d 221, 232 (Tenn. 2011), and *Atkins*. However, because Mr. Black's state intellectual disability proceedings overlapped with the federal habeas proceedings, the Sixth Circuit twice remanded the habeas corpus proceedings to the federal district court specifically for reconsideration of Mr. Black's intellectual disability claim in light of *Atkins* and *Coleman* and ultimately affirmed the denial of habeas relief. *See Black v. Bell*, 664 F.3d 81 (6th Cir. 2011), *reh'g denied* (6th Cir. 2012); *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017), *reh'g en banc denied* (6th Cir. 2017), *cert. denied sub nom, Black v. Mays*, 584 U.S. 1015 (2018). Mr. Black also cites *Hall v. Florida*, 572 U.S. 701 (2014), and the 2021 amendments to Tennessee Code Annotated section 39-13-203 (our intellectual disability statute) as further support for his contention that the 2005 decision is constitutionally infirm. However, in 2021, Mr. Black pursued a new intellectual disability claim based on these developments. *Black v. State*, 2023 WL 3843397 at \*3 (Tenn. Crim. App. June 6, 2023). The trial court concluded Mr. Black's new claim was precluded by the statute's procedural bar, rejecting the parties' attempt to avoid the bar via a stipulation. *Id.* at \*4. In affirming the trial court, the Court of Criminal Appeals panel agreed that the amended statute barred the new claim and that the parties may not stipulate questions of law, and notably the panel further explained why the 2005 appeal is not undermined by *Hall v. Florida*. *Id.* at \*4-11. Mr. Black chose not to seek review in this Court. Thus, Mr. Black's intellectual disability claim was fully litigated on the merits, and the judgment is final. He may not seek to recall the mandate as a vehicle to relitigate his claim.

Finally, Mr. Black alternatively asks the Court to issue a certificate of commutation based on the extenuating circumstances. *See* Tenn. Code Ann. § 40-27-106 (2018); *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000). This Court previously denied Mr. Black's request for a certificate of commutation in its February 24, 2020 order setting Mr. Black's original execution date. Mr. Black has presented no extenuating circumstances to warrant reconsideration of our earlier denial. Accordingly, it is hereby ORDERED that the motion to recall the mandate is DENIED.

It appearing to the Court that Mr. Black is indigent, costs are taxed to the State of Tennessee.

PER CURIAM