

**DEATH PENALTY CASE**  
**EXECUTION DATE: AUGUST 5, 2025**  
Case No. M2004-01345-SC-R11-PD

---

---

**IN THE TENNESSEE SUPREME COURT**  
**AT NASHVILLE**

---

BYRON BLACK,  
Appellant,

v.

STATE OF TENNESSEE,  
Appellee.

---

Davidson County Criminal Court Case No. 88-S-1479

---

**REPLY TO RESPONSE TO**  
**MOTION TO RECALL THE MANDATE**

---

FEDERAL PUBLIC DEFENDER  
MIDDLE DIST. OF TENNESSEE  
CAPITAL HABEAS UNIT

KELLEY J. HENRY  
Chief, Capital Habeas Unit

AMY D. HARWELL  
First Asst. Federal Pub. Defender  
Asst. Chief, Capital Habeas Unit

MARSHALL JENSEN  
Asst. Federal Public Defender

810 Broadway, Suite 200  
Nashville, TN 37203

Phone: (615) 736-5047

Fax: (615) 736-5265

Email: [Kelley\\_Henry@fd.org](mailto:Kelley_Henry@fd.org)

The State Attorney General does not dispute the fact that if Byron Black had waited 19 years to file his Motion to Reopen based on his ineligibility for the death penalty due to intellectual disability, he would be off death row. The State Attorney General does not dispute that every single expert who has ever evaluated Mr. Black—including the key witness that the State relied on in 2005--all conclude that Mr. Black is intellectually disabled. There is no contrary evidence.

Euphemistically referring to the decisions in *Hall v. Florida*, 572 U.S. 701, 712 (2014); *Brumfield v. Cain*, 576 U.S. 305, 317 (2015); *Moore v. Texas*, 581 U.S. 1, 15 (2017) as “later developments,” (Opp. at 10) the State Attorney General admits that every Supreme Court decision since the 2005 decision in the instant case goes against the legal analysis applied in the Court of Criminal Appeals’ 2005 opinion. In *Hall*, *Brumfield*, and *Moore* the United States Supreme Court set a constitutional floor. Yet the CCA’s 2005 decision is based on facts and factors *Hall*, *Brumfield*, and *Moore* expressly rejected as unreliable.

The 2005 decision is wrong on the law and the facts. And yes, Byron Black sought every opportunity to seek relief to which he is entitled. He did not delay. He is not acting last minute. It is the State Attorney General who hides behind procedural technicalities to secure his execution in violation of the state and federal constitutions. *Cf. Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001) (“[t]he importance of correctly resolving constitutional issues suggests that constitutional issues should rarely be foreclosed by procedural technicalities.”).

The State of Tennessee stipulated that Byron Black is intellectually disabled. Dr. Daniel Martell's 2022 report using the standard required by Supreme Court precedent confirms this fact. The State Attorney General cites no contrary proof.

If this is not an extraordinary case, then no such case exists.

This Court has a solemn duty to enforce the laws of the State of Tennessee and state and federal constitutions. If this Court feels it has no procedural avenue to right this wrong, then it should say so and issue a certificate of commutation to the Governor. To do so would be faithful to this Court's stated, "commitment 'to the principle that Tennessee has no business executing persons who are intellectually disabled.'" *Payne v. State*, 493 S.W.3d 478, 486 (Tenn. 2016) (quoting *Keen v. State*, 398 S.W.3d 594, 613 (Tenn. 2012)).

Respectfully submitted this the 3rd day of July, 2025.

Kelley J. Henry, BPR #021113  
Chief, Capital Habeas Unit

Amy D. Harwell, BPR #18691  
First Asst. Fed. Pub. Defender  
Asst. Chief, Capital Habeas Unit

Marshall Jensen, BPR # 36062  
Asst. Federal Public Defender  
FEDERAL PUBLIC DEFENDER  
MIDDLE DISTRICT OF  
TENNESSEE  
810 Broadway, Suite 200  
Nashville, TN 37203  
Phone: (615) 736-5047

Fax: (615) 736-5265

Email: [kelly\\_henry@fd.org](mailto:kelly_henry@fd.org)

BY: /s/ Kelley J. Henry

Counsel for Byron Black

### **Certificate of Service**

I, Kelley J Henry, certify that on July 3, 2025, a true and correct copy of the foregoing was served via email and electronically through the Court's TruFiling system to Nicholas Spangler, Deputy Attorney General, P.O. Box 20207, Nashville, Tennessee 37202.

BY: /s/ Kelley J. Henry  
Counsel for Byron Black