

Summary of SC88625, *State ex rel. Andrew Lyons v. George Lombardi and Chris Koster*
Original mandamus proceeding concerning case originating in Scott County
Argued and submitted Nov. 5, 2009; opinion issued Jan. 26, 2010

Attorneys: Lyons was represented by Frederick A. Duchardt Jr. of Trimble, (816) 213-0782; and the state was represented by Stephen D. Hawke of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of murder seeks relief from his death sentence, claiming he is mentally retarded. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri issues its writ of mandamus prohibiting the man's execution. The evidence supports the master's conclusions that the man is mentally retarded based on his IQ, substantial limitations in two adaptive behaviors, and documentation that his condition manifested before he turned 18 years old.

Facts: Andrew Lyons was convicted of first-degree murder and sentenced to death for killing his estranged girlfriend. This Court affirmed his sentence. *State v. Lyons*, 951 S.W.2d 584 (Mo. banc 1997). The United States Supreme Court later determined, in *Atkins v. Virginia*, 536 U.S. 304 (2002), that the United States Constitution prohibits the execution of an individual who is mentally retarded. Claiming he is mentally retarded, Lyons filed a petition in mandamus in this Court as provided in *In re Competency of Parkus*, 219 S.W.3d 250, 254 (Mo. banc 2007). This Court appointed a circuit court judge as master to take evidence in the case. The master heard testimony from four witnesses offered by Lyons and one by the state and received numerous exhibits, including expert reports, limited school records and materials from Lyons' relatives describing his experiences growing up. After receiving the evidence, the master concluded Lyons' condition meets the statutory definition of "mental retardation."

ISSUE PERMANENT WRIT OF MANDAMUS.

Court en banc holds: Because there is substantial evidence to show Lyons meets the statutory definition for "mental retardation," this Court will issue its permanent writ of mandamus prohibiting Lyons' execution; recall its last mandate in *Lyons*; set aside Lyons' death sentence as to the killing of his estranged girlfriend; and resentence Lyons for that offense to life imprisonment without eligibility for probation, parole or release except by act of the governor. Under section 565.030.6, RSMo Supp. 2008, "mental retardation" is a condition that is characterized by significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors and that manifests itself and is documented before 18 years of age. Under the current Diagnostic and Statistical Manual of Mental Disorders, significantly subaverage intellectual functioning is an IQ of 61 to 70, which is the range in which Lyons tested. There is substantial evidence to support the master's findings that Lyons had continual extensive related deficits in the adaptive behaviors of communications and functional academics, noting, for instance, that Lyons' attorneys and experts had difficulty

communicating with him; that he cannot read, write or spell; that he was in special education classes; and that he spent three consecutive years in the 10th grade. Though scant, the records Lyons offered to document his conditions were sufficient to support the master's conclusion that Lyons' conditions were not fabricated recently and were documented before Lyons turned 18.