IN THE MISSOURI SUPREME COURT

RONALD JOHNSON,	)	
	)	
Appellant,	)	
	)	
vs.	)	APPEAL NO. SC97330
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

APPEAL TO THE MISSOURI SUPREME COURT
ON TRANSFER FROM THE MISSOURI COURT OF APPEALS,
EASTERN DISTRICT
FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
22nd JUDICIAL CIRCUIT,
THE HONORABLE STEVEN OHMER
JUDGE AT PLEA, SENTENCING &
POST-CONVICTION PROCEEDINGS

APPELLANT'S SUBSTITUTE REPLY BRIEF

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INDEX

TABLE OF AUTHORITIES

Cases

STATEMENT OF FACTS

Ronald stands on the statement of facts in his initial brief.

REPLY ARGUMENT FOR FIRST POINT

The motion court clearly erred when it denied Ronald's motion for post-conviction relief following a hearing because Ronald proved by a preponderance of the evidence that he was denied his rights to effective assistance of counsel, due process of law, and freedom from cruel and unusual punishment, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §10 and § 18(a) of the Missouri Constitution, when his attorney coerced him to enter a plea of guilty to life without parole for murder in the first degree by using the threat of the death penalty to induce a plea. This is error in that a reasonably competent attorney would have known that Ronald, who had a diagnosis of mental retardation, and whose IQ was listed as 53 in every record reviewed by plea counsel, was not eligible to be executed, and a reasonably competent attorney would not have informed Ronald he was at risk for the death penalty if he did not plead guilty. But for plea counsel's unreasonable advice and lack of knowledge, Ronald would not have been coerced into pleading guilty to a sentence of life without parole in a manner that was neither knowing, voluntary, nor intelligent.

Analysis

When Ronald Johnson pleaded guilty, he gave up his right to a trial, his right to the possibility of a lesser included offense, his right to the possibility of mitigation of his level of guilt on account of his having schizophrenia, a seizure disorder and mental retardation. Ronald gave up all of these things for one reason-- because Ronald was afraid that he could receive the death penalty if he went to trial. But the threat of death was and remains illusory in this case.

Ronald was and will never be eligible for the death penalty, due to his mental retardation or intellectual disability. The State acts as if Ronald relies on merely his IQ score to show that he suffers from mental retardation. (Resp Br. at 19) But Ronald does not rely sole on his IQ score. Ronald does have a low IQ score, at somewhere between 53 and 64. (Pcr Tr at 33, 54, 55-9, 67, 73). Ronald has a long standing diagnosis of mental retardation, including both low IQ and poor adaptive functioning. (Pcr Tr at 33, 54, 55-9, 67, 73). He was diagnosed in the second grade, and continues to have that diagnosis to this day. (Pcr Tr at 33, 54, 55-9, 67, 73). Ronald is not only in the bottom 1% of human intellectual functioning- the fact that he is so limited has impaired his adaptive functioning since childhood. (Pcr Tr 55-60). Every medical and educational record in this case reflects this diagnosis.

The only individual who did not agree with this diagnosis was plea counsel, Cleveland Tyson. This is despite the fact that Mr. Tyson was armed with Mr. Johnson's school records, showing a diagnosis of mental retardation, and Mr. Johnson's court-ordered evaluation, which also reflected such a finding. (Pcr Tr 34-5). The state pleads that Mr. Tyson's belief that Ronald was unimpaired was reasonable. (Resp Br. at 18) However, this ignores not only the plethora of records in Mr. Tyson's care indicating Ronald's diagnoses , but also Mr. Tyson's unabashed ignorance of the law or what constituted mental retardation. At evidentiary hearing Mr. Tyson had no knowledge of any of the seminal United States' Suprme Courts' opinions on the matter, and was unable to name any standard as to what legally constituted mental retardation. (PCR Tr 31-3). When pressed he noted it never occurred to him to look for such information. He offered advice to his mentally disabled client not based on knowledge, expertise, or legal research, but out of ignorance- and he weighted that advice with the threat of the possibility of death. (PCR Tr 31-3).

The State further insists that Mr. Tyson's advice was still reasonable despite his ignorance of the law, because a jury could disbelieve the fact that Ronald is a person with mental retardation or an intellectual disability. (Resp Br. at 19-20) As such, a plea was the only way for Ronald to avoid a non-illusory risk of execution. By the logic used in the State's brief, a finding by a jury, no matter

how against the weight of the evidence, that a defendant did not have mental retardation or an intellectual disability could not be disturbed on appeal. However, this is objectively not true. The United States' Supreme Court did just that in *Moore v. Texas*. *Moore v. Texas*, 581 U.S. ___, 137 S.Ct. 1039 (2017). In *Moore*, the Court over turned the finding of the ultimate finder of fact under Texas law because the standard for what constituted Mental retardation that it employed was unconstitutionally narrow, and risked the possibility that an intellectually disabled person could face execution. *Id.* The Supreme Court has continually struck down any procedural scheme which risks an intellectually disabled person being executed. *Id; Hall v. Florida*, 572 U.S. 701 (2014). Although the state appeals to the idea that somewhere out there may be an additional expert who will find Ronald does not suffer from mental retardation or intellectual disability the plain record of Ronald's lifetime of mental retardation findings across contexts indicate the spuriousness of this argument.

Further, there is prejudice here—Ronald gave up his rights to trial. He gave up his rights to the possibility of a lesser included offence. He gave up his rights to a mental health based defense. He gave up all of these and took a sentence of life in prison to avoid a sentence he was not, and will never be eligible for. The State acts as if without the guilty plea it is a forgone conclusion that Ronald will be found guilty of the greatest possible offense. But a trial is not so binary that the

sole possibilities are guilty or not guilty on the greatest possible offense. *McNeal V. State* 412 S.W.3d 886, 891-892 (Mo. 2013).

Ronald was given advice by an attorney ignorant of the law, who willfully ignored the uncontroverted evidence that his client was a person with an intellectual disability or mental retardation.

It was inherently coercive to tell Ronald Johnson that if he did not plea to life without parole that he risked execution.

REPLY ARGUMENT FOR SECOND POINT

The motion court clearly erred when it denied Ronald's motion for post-conviction relief following a hearing because Ronald proved by a preponderance of the evidence that he was denied his rights to effective assistance of counsel, due process of law, and protection from cruel and unusual punishment, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 18(a) and 19 of the Missouri Constitution when his attorney never challenged the sufficiency of his mental examination. This was error in that the mental examination in this case was deficient on its face and reasonably skilled counsel would have known to exercise his statutory right to a second independent exam meeting at least minimal professional standards.

Ronald stands on his initial argument.

REPLYARGUMENT FOR THIRD POINT

The motion court clearly erred when it denied Ronald's motion for post-conviction relief following a hearing because Ronald proved by a preponderance of the evidence that he was denied his rights to effective assistance of counsel, due process of law, and protection from cruel and unusual punishment, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 18(a), and 19 of the Missouri Constitution and RSMO § 556.041 when he was found to be competent to plead guilty. Ronald proved by a preponderance of the evidence that he was not and is not competent to proceed because of his mental disabilities.

Ronald stands on the argument in his initial brief.

CONCLUSION

WHEREFORE, based on the arguments as set forth in this brief and appellant's substitute brief, appellant Ronald Johnson respectfully requests this Honorable Court to vacate his plea and sentence or such other relief as this Court sees fit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Missouri Supreme Court Rule 84.06(h) and Special Rule 363, I hereby certify on the 27th day of December, and a true and complete copy of the foregoing was submitted to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, daniel.mcpherson@ago.mo.gov, via the Missouri e-filing system, care of Mr. Daniel McPherson, Office of the Attorney General.

/s/ Amy E. Lowe
Amy E. Lowe

CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of this Court. This brief was prepared with Microsoft Word for Windows, uses Times New Roman 14 point font, and does not exceed 15,500 Words. The word-processing software identified that this brief contains 1783 words, and 14 pages, with the word count not including the cover page, signature block, and certificates of service and of compliance. In addition, I hereby certify that this document has been scanned for viruses with Symantec Endpoint Protection Anti-Virus software and found virus-free.

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