

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

SEDRICE MAURICE SIMPSON

PETITIONER

v.

Case No. 5:04CV00429 JLH

LARRY NORRIS, Director of the
Arkansas Department of Correction

RESPONDENT

OPINION AND ORDER

Sedrice Maurice Simpson's petition for writ of habeas corpus is before the Court on remand from the United States Court of Appeals for the Eighth Circuit. In *Simpson v. Norris*, 490 F.3d 1029 (8th Cir. 2007), *cert. denied*, 128 S. Ct. 1226 (2008), the Eighth Circuit directed this Court to conduct an evidentiary hearing on Simpson's claim that he is mentally retarded and therefore may not be sentenced to death. *See Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (holding that it is unconstitutional to impose the death penalty on a person who is mentally retarded).

Pursuant to the mandate of the Eighth Circuit, this Court scheduled an evidentiary hearing and issued orders the effect of which was to allow Simpson to develop the factual basis for his claim. Roger Moore, Ph.D., evaluated Simpson on April 28, 2009, and administered the Weschler Adult Intelligence Scale-Fourth Edition, which yielded an intelligence quotient of 59. On September 9, 2009, the parties filed a Joint Stipulation stating that the definition of mental retardation is governed by state law, and that Simpson meets the mental retardation definition contained in Arkansas Code Annotated § 5-4-618, which states, in pertinent part:

(a)(1) As used in this section, "mental retardation" means:

(A) Significantly subaverage general intellectual functioning accompanied by a significant deficit or impairment in adaptive functioning manifest in the

developmental period, but no later than age eighteen (18) years of age; and

(B) A deficit in adaptive behavior.

(2) There is a rebuttable presumption of mental retardation when a defendant has an intelligence quotient of sixty-five (65) or below.

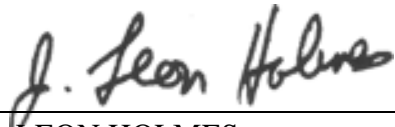
The State concedes that it is unable to rebut the presumption that Simpson is mentally retarded.

Pursuant to the stipulation of the parties, the Court finds that Sedrice Maurice Simpson is mentally retarded under *Atkins* and Arkansas Code Annotated § 5-4-618. Therefore, the State of Arkansas may not impose the death penalty on him. The two death sentences imposed are vacated. The parties stipulated that the death sentences should be changed to two terms of life imprisonment in the Arkansas Department of Correction, without the possibility of parole, and it is so ordered.

Sedrice Maurice Simpson's petition for writ of habeas corpus is therefore GRANTED.

Document #1.

IT IS SO ORDERED this 16th day of September, 2009.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE