IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
November 8, 2022 Session

BYRON BLACK v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 88-S-1479 Walter C. Kurtz, Judge

No. M2022-00423-CCA-R3-PD

At the heart of this appeal is a narrow procedural question: whether the 2021 amendment to Tennessee Code Annotated section 39-13-203 permits the Defendant, Byron Black, to move for a hearing on whether he has an intellectual disability and is therefore ineligible for the death penalty. The trial court dismissed the motion after determining that the Defendant was procedurally barred from bringing the issue. On appeal, we hold that because the issue of the Defendant's intellectual disability has been previously adjudicated, he may not file a motion pursuant to Tennessee Code Annotated section 39-13-203(g)(1). We also hold that the General Assembly's decision not to entitle the Defendant to a second hearing does not subject him to cruel and unusual punishment, nor does it deny him due process of law or the equal protection of the law. Accordingly, we respectfully affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed

TOM GREENHOLTZ, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Kelley J. Henry, Chief, Capital Habeas Unit, Federal Public Defender; Amy D. Harwell, Assistant Chief, Capital Habeas Unit, Federal Public Defender; and Richard Lewis Tennent and Marshall Jensen, Assistant Federal Public Defenders, Nashville, Tennessee, for the appellant, Byron Black.

Jonathan Skrmetti, Attorney General and Reporter; Katharine K. Decker, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Roger Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On March 28, 1988, the Defendant shot and killed his girlfriend, twenty-nine-year-old Angela Clay, and her two daughters, nine-year-old Latoya Clay and six-year-old Lakeisha Clay. *State v. Black*, 815 S.W.2d 166, 170 (Tenn. 1991). After being convicted of three counts of first degree premeditated murder, the Defendant received consecutive life sentences for the murders of his girlfriend and her oldest daughter and a sentence of death for the murder of Lakeisha Clay. *Id.* Our supreme court affirmed the convictions and sentences on direct appeal. *Id.*

After that, the Defendant sought post-conviction relief, alleging that he received the ineffective assistance of counsel and that the capital sentence was unconstitutional. *Byron Lewis Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299, at *1 (Tenn. Crim. App. Apr. 8, 1999). His post-conviction petition was denied, and this Court affirmed the denial on appeal. *Id.* After our supreme court denied permission to appeal, the Defendant filed a petition for a writ of certiorari, which the United States Supreme Court denied on February 28, 2000. *Black v. Tennessee*, 528 U.S. 1192 (2000).

A. DEFENDANT'S 2002 PETITION TO REOPEN

On November 13, 2002, the Defendant filed a motion to reopen his post-conviction petition, "alleging that he was [intellectually disabled] and thus ineligible for the sentence of death." *Byron Lewis Black v. State*, No. M2004-01345-CCA-R3-PD, 2005 WL 2662577, at *2 (Tenn. Crim. App. Oct. 19, 2005).[1] At that time, our General Assembly had defined the term "intellectual disability" (then described as "mental retardation") as follows:

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

[1] Tennessee Code Annotated section 39-13-203(a) was amended in 2010 to substitute the term "intellectual disability" for the term "mental retardation." *See* 2010 Tenn. Pub. Acts, ch. 734, §§ 1 to 3 (eff. April 9, 2010). In so doing, the legislature intended only to substitute new terminology without any other legal effect, substantive or otherwise. *See* 2010 Tenn. Pub. Acts, ch. 734, § 7 (eff. Apr. 9, 2010) ("For purposes of each provision amended by this act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of this act."); *see also Coleman v. State*, 341 S.W.3d 221, 227 n.5 (Tenn. 2011). Because the legal concepts are identical, we follow the lead of our supreme court to refrain from references to "retardation" except where they may be necessary for context. *See Keen v. State*, 398 S.W.3d 594, 600 n.6 (Tenn. 2012).

(1) Significantly subaverage general intellectual functioning as evidenced by a functional intelligence quotient (I.Q.) of seventy (70) or below;

(2) Deficits in adaptive behavior; and

(3) The mental retardation must have been manifested during the developmental period, or by eighteen (18) years of age.

Tenn. Code Ann. § 39-13-203(a) (1997).

In support of his petition to reopen, the Defendant cited *Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001), in which our supreme court "held as a matter of first impression that the execution of [an intellectually disabled] person violates the Eighth Amendment to the United States Constitution and Article I, Section 16 of the Tennessee Constitution." *Black*, 2005 WL 2662577, at *2. The Defendant also relied upon *Atkins v. Virginia*, 536 U.S. 304 (2002), which held that the Eighth Amendment prohibits the execution of intellectually disabled offenders. *Id.* at 321.

After the hearing, the post-conviction court concluded that the Defendant was not intellectually disabled and was thus eligible for the death penalty. *Id.* at *11. The post-conviction court specifically found that "neither the requisites for I.Q. nor adaptive behavior manifested by his eighteenth birthday. All I.Q. tests given before 2001 indicate an I.Q. above 70." *Id.* (footnote omitted).

The Defendant appealed this ruling. On appeal, this Court affirmed the post-conviction court's denial of relief. This Court held that, although the Defendant failed to meet the "bright-line cutoff" of having an I.Q. below 70, he also failed to establish that he had deficits in adaptive behavior or that his intellectual disability manifested before age eighteen. *Id.* at *15-17. Our supreme court denied the Defendant's application for permission to appeal, and the United States Supreme Court denied his petition for a writ of certiorari on October 2, 2006. *Black v. Tennessee*, 549 U.S. 852 (2006).

B. DEFENDANT'S FEDERAL LITIGATION

While the state post-conviction proceedings were ongoing, the Defendant also pursued federal habeas relief pursuant to 28 U.S.C. § 2254. The Defendant raised thirty-four claims, including that he could not be executed because he had an intellectual disability. The district court granted the State's motion for summary judgment, *Black v. Bell*, 181 F. Supp. 2d 832, 837 (M.D. Tenn. 2001), and the Defendant appealed that

judgment to the United States Court of Appeals for the Sixth Circuit. *See Black v. Bell*, 664 F.3d 81, 85 (6th Cir. 2011) (reciting the federal court history of the Defendant's cases).

The Sixth Circuit granted the Defendant's motion to hold the case in abeyance until the Defendant exhausted his intellectual disability claims in the state courts. *Id.* After the conclusion of the state post-conviction proceedings denying relief, the Sixth Circuit remanded the case so that the district court could reconsider, among other things, the Defendant's intellectual disability claim under *Atkins.* *Id.* at 86.

On remand, the district court again denied the Defendant's *Atkins* claim, but the Sixth Circuit vacated the denial and remanded for further proceedings. *Id.* at 86, 106. In part, the Sixth Circuit noted that the district court should consider the Defendant's "level of intelligence and adaptive deficits by the time he was age 18," particularly in light of the Tennessee Supreme Court's opinion in *Coleman v. State*, 341 S.W.3d 221 (Tenn. 2011). *See Black*, 664 F.3d. at 100-01.

On this second remand, the district court concluded that the Defendant "failed to carry his burden of demonstrating intellectual disability by a preponderance of the evidence." *Byron Lewis Black v. Ronald Colson, Warden*, No. 3:00-0764, 2013 WL 230664, at *1 (M.D. Tenn. Jan. 22, 2013) (footnote omitted), *aff'd sub nom. Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017). The court concluded that the Defendant "has not shown significantly subaverage general intellectual functioning as evidenced by a functional IQ of 70 or below manifested by age 18." *Id.* at *14. Additionally, the court said that "[a] full, independent review of the record persuades this Court that the Defendant has not shown weaknesses or deficits in his adaptive behavior prior to age 18 within the meaning of the statute." *Id.* at *18.

On his third appeal to the Sixth Circuit, the Defendant argued, among other things, that the district court "erred in its merits determination that [the Defendant] had not met his burden of establishing entitlement to *Atkins* relief." *Black*, 866 F.3d at 740. The Sixth Circuit disagreed, stating that it could not "find fault with the district court's conclusion[.]" *Id.* at 748. In part, the appellate court concluded that the Defendant "cannot show that he has significantly subaverage general intellectual functioning that manifested before [the Defendant] turned eighteen." *Id.* at 750.

The Defendant appealed the Sixth Circuit's decision, and the United States Supreme Court denied his petition for a writ of certiorari on June 4, 2018. *Black v. Mays*, 138 S. Ct. 2603 (2018).

C. DEFENDANT'S 2021 INTELLECTUAL DISABILITY MOTION

1. Statutory Amendments

In 2021, our General Assembly amended Tennessee Code Annotated section 39-13-203(a) to partially revise the definition of "intellectual disability" in the context of capital sentencing. The legislature retained the requirements that deficits in adaptive behavior must exist and that the intellectual disability must have manifested during the developmental period, or by eighteen years.[2] But, it revised the bright-line requirement that a person have "a functional intelligence quotient (I.Q.) of 70 or below." With the revised definition of "intellectual disability," the statute now provides as follows:

> (a) As used in this section, "intellectual disability" means:
>
> (1) Significantly subaverage general intellectual functioning;
>
> (2) Deficits in adaptive behavior; and
>
> (3) The intellectual disability must have manifested during the developmental period, or by eighteen (18) years of age.

See 2021 Tenn. Pub. Acts, ch. 399, § 1 (eff. May 11, 2021) (codified at Tenn. Code Ann. § 39-13-203(a)).

In addition, the General Assembly established a new procedure by which certain defendants could raise and litigate a claim of intellectual disability by filing a "petition" or a "motion" with the trial court. *See id.* § 2 (codified at Tenn. Code Ann. § 39-13-203(g)(1)). Although this new procedure allowed some defendants to raise an "intellectual disability" claim, it also contained a provision limiting the ability of other defendants to raise such a claim. This limitation, which is presently codified in section 39-13-203(g)(2) (hereinafter "subsection (g)(2)") provides as follows:

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[2] Notably, the Defendant's prior attempts to have himself adjudicated as intellectually disabled were denied for multiple reasons. In the present case, he largely focuses on the change to the standards analyzing his general intellectual functioning. However, his petitions were also denied because he failed to show that he had deficits in adaptive behavior or that his intellectual disability manifested during his developmental period. *See Black*, 2013 WL 230664, at *14, 19; *Black*, 2005 WL 2662577, at *14-17. As we discuss further below, the statutory standards regarding the two latter requirements have remained unaltered since 1990.

(g)(2) A defendant shall not file a motion under subdivision (g)(1) if the issue of whether the defendant has an intellectual disability has been previously adjudicated on the merits.

See id. These amendments became effective on May 11, 2021. *See* 2021 Tenn. Pub. Acts, ch. 399, § 3.

2. Filing of Defendant's Motion

About three weeks later, on June 3, 2021, the Defendant filed a "Motion to Declare [the] Defendant Intellectually Disabled Pursuant to Tenn. Code Ann. § 39-13-203[(g)(1)]." The trial court filed an order noting that neither party addressed the procedural bar contained in subsection (g)(2). The trial court further noted that the Defendant's "intellectual disability claim [was] the subject of multiyear litigation. All previous determinations in state and federal court concluded he was not intellectually disabled. These adjudications were all on the merits of [the Defendant's] claims." Given the prior adjudications, the trial court ordered the parties to file briefs addressing whether subsection (g)(2) would bar the Defendant from filing his motion.

3. Trial Court's Order

After the parties' briefing, the trial court issued an order dismissing the petition on March 29, 2022. The trial court acknowledged that, after the Tennessee Supreme Court and the United States Supreme Court held in 2001 and 2002, respectively, that it was unconstitutional to apply the death penalty to intellectually disabled persons, the Defendant had "filed many appeals and has had hearings" to have himself declared intellectually disabled. After reviewing the procedural history of the case, the trial court found that the Defendant's "prior intellectual disability claim was 'previously adjudicated on the merits.'"

The trial court stated that subsection (g)(2) would be "superfluous" if it were not applied to the Defendant's case to prevent the relitigation of a previously adjudicated intellectual disability claim. The trial court insisted that "the 2021 statute merely codifies the state and federal case law that developed after the initial decisions regarding [the Defendant's] mental status." The trial court noted that the statutory definition of "intellectual disability" required the disability to manifest before the age of eighteen and for it to be present when the crime was committed. The record reflected that the Defendant

committed his crime when he was thirty-three years old but that he was not diagnosed as intellectually disabled until he was forty-five.

The trial court distinguished the Defendant's case from those of Pervis Payne and David Keen, two "death row inmates who . . . filed intellectual disability claims under the recently enacted § 39-13-203(g)." *See Payne v. State*, 493 S.W.3d 478, 492 (Tenn. 2016); *Keen v. State*, 398 S.W.3d 594, 598 (Tenn. 2012). The trial court stated that "[section] 39-13-203(g) was clearly meant to apply" to those cases because neither "ever had an evidentiary hearing on their intellectual disability claims[.]" Moreover, "no court of competent jurisdiction had ever ruled that those inmates *were* or *were not* intellectually disabled." In contrast, the court found that the Defendant "has had both an evidentiary hearing and a prior ruling on the merits of his claim."

The trial court also "acknowledge[d] that there have been several developments in the legal analysis and medical evaluation of intellectual disability claims since [the Defendant] filed his original *Atkins*-based motion to reopen." Nevertheless, the court found that "despite the developments in medical and judicial evaluation of intellectual disability cases since T.C.A. § 39-13-203 was first enacted in 1990, . . . the General Assembly chose to include subsection (g)(2) in the revised version of § 39-13-203." The trial court determined that subsection (g)(2) "applies regardless of when that previous adjudication [of intellectual disability] occurred." Thus, the trial court dismissed the petition.

It is from this ruling that the Defendant currently appeals.

ANALYSIS

I. APPLICATION OF TENN. CODE ANN. § 39-13-203

A. STANDARD OF APPELLATE REVIEW

Our supreme court has recognized that "the first question for a reviewing court on any issue is 'what is the appropriate standard of review?'" *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). The issue in this case is whether the 2021 amendments to Tennessee Code Annotated section 39-13-203 permit a defendant to move the trial court to determine whether he is "intellectually disabled" when a court has previously concluded that he is not. Because this issue requires a legal interpretation of a statute, the issue is one of law that this Court reviews de novo with no presumption of correctness. *State v. Jones*, 589 S.W.3d 747, 756 (Tenn. 2019).

"In interpreting statutory provisions, our role is to determine how a reasonable reader would have understood the text at the time it was enacted." *Lawson v. Hawkins County*, 661 S.W.3d 54, 59 (Tenn. 2023). As our supreme court recently made clear in *State v. Deberry*, 651 S.W.3d 918, 924-25 (Tenn. 2022),

> [t]his Court's role in statutory interpretation is "to determine what a statute means." *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 175 (Tenn. 2008). Specifically, we must decide "how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012). Original public meaning is discerned through consideration of the statutory text in light of "well-established canons of statutory construction." *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008); *see also Kisor v. Wilkie*, —— U.S. ——, 139 S. Ct. 2400, 2442, 204 L.Ed.2d 841 (2019) (Gorsuch, J., concurring in the judgment) (noting that judges have employed "traditional tools of interpretation . . . for centuries to elucidate the law's original public meaning").

Deberry also reaffirmed important principles regarding statutory interpretation. First, a court must "give the words of a statute their 'natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose.'" *Id.* at 925 (quoting *Ellithorpe v. Weismark*, 479 S.W.3d 818, 827 (Tenn. 2015)). Additionally, a court should "consider the whole text of a statute and interpret each word 'so that no part will be inoperative, superfluous, void or insignificant.'" *Id.* (quoting *Bailey v. Blount Cnty. Bd. of Educ.*, 303 S.W.3d 216, 228 (Tenn. 2010)). Finally, a court must "also consider '[t]he overall statutory framework.'" *Id.* (quoting *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 846 (Tenn. 2019)).

Moreover, *Deberry* was careful to emphasize that "[a] court should deem statutory language ambiguous only after employing all of the traditional tools of statutory construction, including consulting dictionary definitions, examining statutory structure and context, and applying well-established canons of statutory construction." *Id.* at 930. Our supreme court further cautioned:

> To be sure, "employing the traditional tools of statutory construction may require some effort." *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 970 (11th Cir. 2016) (en banc). But "that effort does not make a text ambiguous." *Id.* We reiterate, moreover, that when the plain meaning of a statute is clear after application of the traditional tools of statutory interpretation, a court should not "delve into the legislative history of an unambiguous statute." [*State v.*] *Welch*, 595 S.W.3d [615,] 624 [(Tenn.

2020)]; *see also D. Canale & Co. v. Celauro*, 765 S.W.2d 736, 738 (Tenn. 1989) ("Where there is no ambiguity in the language of an act, comments of legislators, or even sponsors of the legislation, before its passage are not effective to change the clear meaning of the language of the act.").

Id.

Thus, "[w]hen statutory language is plain and unambiguous, this Court must not apply a construction apart from the words of the statute." *State v. Nelson*, 23 S.W.3d 270, 271 (Tenn. 2000). In other words, "we apply the plain language in its normal and accepted use" and "[u]nder such circumstances, there is no need for recourse to the broader statutory scheme, legislative history, historical background, or other external sources of the Legislature's purpose." *State v. Strode*, 232 S.W.3d 1, 10-11 (Tenn. 2007) (internal quotation marks and citations omitted). Instead, our obligation "is simply to enforce the written language." *In re Estate of Davis*, 308 S.W.3d 832, 837 (Tenn. 2010); *see State v. Terrell Jackson*, No. W2019-01883-CCA-R3-CD, 2021 WL 1157025, at *3 (Tenn. Crim. App. Mar. 25, 2021) (quoting *Davis*, 308 S.W.3d at 837), *perm. app. denied* (Tenn. July 15, 2021).

B. TEXT OF THE STATUTE

On appeal, neither party explicitly argues that subsection (g)(2) is ambiguous; instead, each party argues that the statute is unambiguous and should be interpreted in their favor. Specifically, the Defendant contends that subsection (g)(2) should not operate as a procedural bar to his instant motion because he "seeks adjudication in the *first* instance of whether he is intellectually disabled pursuant to Tennessee Code Annotated § 39-13-203 (2021)" as amended. In other words, the Defendant asserts that subsection (g)(2) only prohibits successive motions filed pursuant to subsection (g)(1) using the revised definition of "intellectual disability."

In response, the State argues that subsection (g)(2) plainly prohibits a defendant from seeking a second adjudication of his or her intellectual disability, irrespective of when the first adjudication occurred. The State asserts that if this Court "perceives any ambiguity in the statute," then the legislative history clarifies that the legislature intended to prohibit a second adjudication of the issue of intellectual disability. Upon review, we agree with the State that the statute is unambiguous and that subsection (g)(2) does not entitle the Defendant to a second hearing.

We start, as we must, with the plain language of Tennessee Code Annotated section 39-13-203(g), which provides:

> (1) A defendant who has been sentenced to the death penalty prior to [the effective date of this act], and whose conviction is final on direct review may petition the trial court for a determination of whether the defendant is intellectually disabled. The motion must set forth a colorable claim that the defendant is ineligible for the death penalty due to intellectual disability. Either party may appeal the trial court's decision in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure.
>
> (2) A defendant shall not file a motion under subdivision (g)(1) if the issue of whether the defendant has an intellectual disability has been previously adjudicated on the merits.

Under the statute's plain language, three things must be true before a motion can be properly brought before a trial court:

> (1) A defendant must have been sentenced to death before the effective date of the statute;
>
> (2) A defendant's conviction must be final, and all direct appeals must have been concluded; and
>
> (3) The issue of whether the defendant has an intellectual disability has not been previously adjudicated on the merits.

For two reasons, we conclude that the Defendant is barred from filing a motion under the plain language of subsection (g)(2). First, the legislature's use of the words "previously adjudicated" is important. The phrase "previously adjudicated" could only have meaning on the date that the statute took effect if it were possible that an intellectual disability determination could have been made before that date, as it was.

The concept of "intellectual disability" in capital proceedings has existed under our law for over thirty years. *See* 1990 Tenn. Pub. Acts, ch. 1038. During this entire time, the law has specifically allowed a defendant to raise the issue of his or her intellectual disability during the capital trial itself. *See id.* Other defendants, such as the Defendant, have raised the issue of intellectual disability in post-conviction proceedings as well. That the definition of "intellectual disability" was slightly different during a previous adjudication does not mean that the "issue" could not have been "previously adjudicated." Thus, the use of the term "previously" is textual evidence that the procedural bar applies when intellectual disability determinations have been made before the effective date of subsection (g)(2).

Second, although the Defendant argues that the procedural bar is limited to a second motion seeking a hearing under the revised definition of "intellectual disability," no textual basis appears to limit or restrict the statute's application in this way. It is an axiom of statutory interpretation that "[a] statute should be read naturally and reasonably, with the presumption that the legislature says what it means and means what it says." *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015). Had the General Assembly intended such a limitation, it only had to say that "a defendant shall not file a motion under subsection (g)(1) if the defendant has previously filed a motion under this section," as it has done in other cases. *Cf.* Tenn. Code Ann. § 40-30-102(c); § 39-17-432(h)(3)(A) (providing that a "court shall not entertain a motion made under this subsection (h) to resentence a defendant if (A) A previous motion *made under this subsection (h)* to reduce the sentence was denied after a review of the motion on the merits[.]" (emphasis added)). But the legislature did not say anything like this. Instead, it created a procedural bar that is significantly broader than the Defendant's limited formulation.

To create the restriction advanced by the Defendant would be contrary to the fundamental principle of statutory construction that the courts "must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application." *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). As such, we respectfully decline to employ a forced or subtle construction to limit the application of subsection (g)(2) only to people who have previously filed a motion under subsection (g)(1). *See Coleman*, 341 S.W.3d at 240 (identifying a "principle" that has "guided our approach to the application and interpretation of Tenn. Code Ann. § 39-13-203" as being that "[t]he Court will decline to 'read in' language into the statute that the General Assembly did not place there").

In response, the Defendant appears to argue that he has not previously had a hearing to determine the issue of his "intellectual disability" because his prior hearing addressed the issue of his "mental retardation." Respectfully, because the two terms have always had an identical statutory meaning in capital sentencing, this is a distinction without a difference. As noted above, when the legislature substituted the term "intellectual disability" for "mental retardation" in 2010, it stated that it was only making "terminology changes in Tennessee laws." *See* 2010 Tenn. Pub. Acts, ch. 734. To remove any doubt as to this intention, the General Assembly expressly provided that "a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of this act." *See id.* § 7. As such, any previous adjudication of one's "mental retardation" for capital sentencing purposes would constitute, as a matter of law, an adjudication of one's "intellectual disability." This argument is without merit.

We conclude that the procedural bar in subsection (g)(2) is unambiguous.[3] Its plain language applies to bar any motion for a hearing when the issue of a defendant's "intellectual disability" has been previously adjudicated on its merits. Accordingly, because the issue of the Defendant's "intellectual disability" has been "previously adjudicated," we conclude that he may not file a motion pursuant to subsection (g)(1).

C. HISTORY OF LEGISLATIVE DEBATES

Although the parties essentially argue that the statute is unambiguous, the parties have nevertheless concentrated their appellate arguments on whether the legislative debates in the Senate and House of Representatives regarding the enactment of subsection (g) support their respective positions. As we stated earlier, because the language of subsection (g)(2) is plain and unambiguous, it is improper to resort to legislative debates to resolve an issue of interpretation. Indeed, "a cardinal rule of statutory interpretation precludes the consideration of legislative commentary to interpret statutory language when that language is clear and unambiguous." *Waters v. Farr*, 291 S.W.3d 873, 908 (Tenn. 2009); *see State v. Michael Patrick Sullivan*, No. E2019-01471-CCA-R3-CD, 2021 WL 1086886, at *7 (Tenn. Crim. App. Mar. 22, 2021) (after determining that language of Tenn. Code Ann. § 39-14-211 is unambiguous, stating that "[w]e need not, therefore, delve into the legislative transcripts").

This principle was reaffirmed by our supreme court in *Deberry*, which expressly recognized that "when the plain meaning of a statute is clear after application of the traditional tools of statutory interpretation, a court should not 'delve into the legislative history of an unambiguous statute.'" *Deberry*, 651 S.W.3d at 930. Nevertheless, it is also true that our supreme court has looked to legislative history or debates in limited circumstances even when a statute is unambiguous. For example, it has done so to confirm its interpretation of the language of a statute, *see In re Rader Bonding Co., Inc.*, 592 S.W.3d 852, 862 n.14 (Tenn. 2019), and to confirm that the legislative history did not conflict with its interpretation of a statute, *see State v. Marshall*, 319 S.W.3d 558, 562 (Tenn. 2010).

That said, to the extent that the legislative history has any relevance to our inquiry at all, it affords the Defendant no comfort. Notably, the legislative debates on Public

[3] The Defendant urges this Court to apply the rule of lenity if we were to find that the statute is ambiguous. This Court has explained that "[t]he rule of lenity, which requires that an ambiguous criminal statute be resolved in favor of the defendant, is a 'tie-breaker' to be used only when an ambiguity remains after considering the plain language of the statute, the legislative history, and other canons of statutory construction." *State v. Curtis Logan Lawson*, No. E2018-01566-CCA-R3-CD, 2019 WL 4955180, at *7 (Tenn. Crim. App. Oct. 8, 2019) (quoting *State v. Marshall*, 319 S.W.3d 558, 563 (Tenn. 2010)); *see State v. Horton*, 880 S.W.2d 732, 735 (Tenn. Crim. App. 1994). However, because subsection (g)(2) is not ambiguous, the rule of lenity does not apply in this circumstance.

Chapter 399 generally focused on issues other than the narrow one now before this Court. However, when discussing this narrow issue, both the House and Senate sponsors asserted that Public Chapter 399 would not permit a person to file a motion for a hearing under the newly amended statute when his or her intellectual disability had been previously adjudicated. In fact, upon being asked about this issue directly, the House sponsor responded that "[t]hose individuals on death row who have had the issue of intellectual disability adjudicated are not eligible to have that appeal hearing once again. So it's only individuals who have not had that." *Hearing on H.B. 1062 Before the H. Crim. Just. Comm.*, 112th General Assembly (Tenn. Apr. 14, 2021) (Rep. Hawk).

Further, in the Senate Judiciary Committee, the bill's sponsor specifically observed that the original bill, which did not contain the subsection (g)(2) procedural bar, did "not exclude a small number of defendants who have raised and fully litigated the issue of intellectual disability in the ordinary review process. The bill would allow them a second opportunity to relitigate a decided issue." *Hearing on S.B. 1349 Before the S. J. Comm.*, 112th General Assembly (Tenn. Apr. 13, 2021) (Sen. Gardenhire). In other words, the originally proposed legislation would have allowed a defendant to bring a new action, even if the issue of the defendant's intellectual disability had already been fully litigated.

However, the Senate Judiciary Committee did not pass this original bill. Instead, the committee amended the bill to include the procedural bar to prevent cases like the Defendant's from being relitigated, and it sent this amended bill to the Senate floor. On the Senate floor, the House bill, which also contained the procedural bar, was substituted for the Senate Bill. In speaking about the bill, the Senate sponsor specifically stated that the legislation applied only to "the very limited number of individuals with an intellectual disability" and who "have not had their intellectual disability claims fully adjudicated by the courts on the merits." *Hearing on S.B. 1349 Before the S. Floor Sess.*, 112th General Assembly (Tenn. Apr. 26, 2021) (Sen. Gardenhire). Indeed, in response to specific questioning about how the bill affected current defendants "on death row," the sponsor answered that "[t]hose that are currently, have had their cases adjudicated and are on death row, this bill, they cannot go back and retry the case." *Id.*

In all cases, the legislative sponsors spoke of current death-row prisoners who "have had" hearings to determine the presence of an intellectual disability. Necessarily, these hearings could only have been held under the previous standards defining intellectual disability, including under the previous terminology.

Although we reject the need to resort to legislative debates to inform the meaning of an unambiguous statute, *see Deberry*, 651 S.W.3d at 930, we agree with the State that the legislative history confirms our interpretation of subsection (g)(2). As such, the trial court did not err in finding that subsection (g)(2) bars the Defendant's motion.

D. WAIVER

The Defendant next argues that the State has waived any "defense" that subsection (g)(2) bars his motion. In the trial court, the District Attorney General agreed with the Defendant that subsection (g)(2) did not bar the Defendant's motion and that the trial court "should consider the issue of [the Defendant's] intellectual disability." The State also stipulated that the Defendant "would be found intellectually disabled" and that "under current law and the medical reports before the [trial court], the State concedes that the [Defendant's] capital sentence should be commuted to one of life in prison, consecutive to his other sentences." The trial court declined to accept the agreed resolution.

In light of this stipulation in the trial court, the Defendant asserts that the State cannot now argue that his motion is barred by subsection (g)(2). He quotes Tennessee Rule of Criminal Procedure 12(f) to argue that "'a party waives any defense, objection, or request by failing to' timely and properly raise it." He also asserts that because the State agreed in the trial court that the Defendant was entitled to a hearing, the trial court was not free to reject that waiver. In response, the State argues that "the parties cannot bind a court to an incorrect construction of a statute; indeed, parties simply may not stipulate to questions of law." We agree with the State.

As we noted earlier, "[s]tatutory construction entails questions of law." *State v. Linville*, 647 S.W.3d 344, 354 (Tenn. 2022). "The law is clear that questions of law are not subject to stipulation by the parties to a lawsuit and that a stipulation purporting to state a proposition of law is a nullity." *Mast Advert. & Pub., Inc. v. Moyers*, 865 S.W.2d 900, 902 (Tenn. 1993). Accordingly, courts "are not bound by stipulations pertaining to questions of law." *Home Fed. Bank, FSB, of Middlesboro, Ky. v. First Nat. Bank of LaFollette, Tenn.*, 110 S.W.3d 433, 440 (Tenn. Ct. App. 2002).

In this case, no party could avoid the law simply by agreeing to a mechanism that the law affirmatively prohibits. The trial court recognized this principle when it observed that "[a] judge routinely and conciliatorily wants to resolve cases when the parties agree to a resolution but cannot do so when the law forbids the agreed resolution." In resolving the legal issue before it, the trial court did not act inappropriately in investigating the nature of the proposed concession before accepting it. In fact, the court had an obligation to make such an investigation. *See State v. Gomez*, 163 S.W.3d 632, 654 (Tenn. 2005) ("Before accepting a concession, this Court independently analyzes the underlying legal issue to determine whether the concession reflects a correct interpretation of the law."), *vacated on other grounds*, 549 U.S. 1190 (2007).

Because the parties cannot stipulate to a procedure that the law forbids, the State could not have limited the trial court's authority by "waiving" the requirements of subsection (g)(2).[4] Accordingly, we respectfully conclude that this claim is without merit.

II. EIGHTH AMENDMENT

The Defendant next asserts that he and the State agreed in the trial court that he has an intellectual disability. From this agreement, the Defendant argues that "any interpretation of subsection (g)(2) that permits an intellectually disabled person to be put to death would be cruel and unusual, and unconstitutional" pursuant to the Eighth Amendment to the United States Constitution and article I, section 16 of the Tennessee Constitution.

Using virtually identical language, the federal and state constitutions prohibit "cruel and unusual punishments." U.S. Const. amend. VIII; Tenn. Const. art. I, § 16. Although "[t]he protection against cruel and unusual punishments afforded by the Eighth Amendment [to the United States Constitution] has defied precise delineation," *State v. Smith*, 48 S.W.3d 159, 170 (Tenn. Crim. App. 2000) (citation omitted), no one disputes that the execution of intellectually disabled persons is statutorily and constitutionally prohibited, *see* Tenn. Code Ann. § 39-13-203(b); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001). However, the issue in this case concerns the procedural mechanism for deciding whether a person has an intellectual disability.

As an initial matter, the Eighth Amendment does not require that the Defendant be offered a hearing under the revised definition of "intellectual disability." In *Hall v. Florida*, 572 U.S. 701 (2014), the United States Supreme Court recognized that "[i]ntellectual disability is a condition, not a number," and that a definition of "intellectual disability" using a "strict IQ test score cutoff of 70" is "invalid under the Constitution's Cruel and Unusual Punishments Clause." *See id.* at 712, 723. Against this backdrop, our General Assembly revised our statutory definition of "intellectual disability" for capital sentencing purposes.

Since *Hall*, though, courts have had the opportunity to address whether defendants already sentenced to death have the right to have a hearing under *Hall*'s modified definition of "intellectual disability." Notably, our supreme court has held that *Hall* does not require

[4] While this case has been pending, the General Assembly enacted Public Chapter 182, which specifically provides that the Attorney General is not bound by any stipulations made by a district attorney general in these types of cases. *See* 2023 Tenn. Pub. Acts, ch. 182, § 1 (eff. April 28, 2023) ("The attorney general and reporter is not bound by any stipulations, concessions, or other agreements made by the district attorney general related to a request for collateral review," including in "a proceeding under § 39-13-203(g).").

a hearing under the revised standards and that, regardless, *Hall*'s substantive holding does not apply retroactively to capital cases on collateral review:

> . . . *Hall* does not address by what procedural avenue the Petitioner in this case might be afforded a hearing on his claim of intellectual disability. *Hall* does not stand for the proposition that the Petitioner is entitled to a hearing under the facts and procedural posture of this matter.
>
> Moreover, even if *Hall* held that a condemned inmate must be afforded a hearing on a collateral claim that he is intellectually disabled, the decision would benefit the Petitioner only if it applied retroactively. However, the United States Supreme Court has not ruled that *Hall* is to be applied retroactively to cases on collateral review. The United States Courts of Appeal for the Eighth and Eleventh Circuits have concluded that *Hall* does not apply retroactively to cases on collateral review. The Petitioner has cited us to no federal appellate decision holding that *Hall* must be applied retroactively to cases on collateral review. We decline to hold that *Hall* applies retroactively within the meaning of Tennessee Code Annotated section 40–30–117(a)(1).

See Payne, 493 S.W.3d at 490-91 (citing *Goodwin v. Steele*, 814 F.3d 901, 903-04 (8th Cir. 2014) (per curiam); *In re Henry*, 757 F.3d 1151, 1159-61 (11th Cir. 2014)).

In addition, the Eleventh Circuit has rejected an attempt by a federal habeas petitioner to file a second petition on the issue of intellectual disability, concluding that *Hall* is not retroactive. *See Kilgore v. Sec'y, Fla. Dep't of Corr.*, 805 F.3d 1301, 1316 (11th Cir. 2015). In discussing why such a rule would be problematic, the Eleventh Circuit noted that

> [i]n *Hall*, the United States Supreme Court no longer took a hands-off approach to the states' intellectual disability definitions. To retroactively apply this kind of new procedural rule to the final determination of a state court appeal would impose the very uncertainty and costs on the states that *Teague* warned against—discouraging the states from rigorously developing and following their intellectual disability law, decreasing the importance of finality and its effect on deterrence given the ever-changing nature of our understanding of intellectual disability, and unnecessarily pressing the states to re-evaluate defendants each time intellectual disability standards are changed.

Id. at 1316 (citing *Teague v. Lane*, 489 U.S. 288 (1989)). We agree and hold that the Eighth Amendment does not require that the Defendant be afforded a hearing under Tennessee Code Annotated section 39-13-203(g)(1).

A more significant issue is present, however. Perhaps overlooked in this litigation is that the 2021 amendments to the definition of "intellectual disability" do not directly affect the Defendant. For the past three decades, the statutory definition of "intellectual disability," and before it, "mental retardation," has required a showing that "[t]he [intellectual disability] must have been manifested during the developmental period, or by eighteen (18) years of age." This requirement was not changed, modified, or amended by the 2021 amendments; it is precisely the same as it has been since 1990.

This fact is significant because the Defendant has had a full and fair opportunity to show that any intellectual disability manifested during his developmental period. And every court looking at his case previously has concluded that the Defendant failed to show that any condition manifested before he was eighteen. The 2021 amendments to section 39-13-203(a) do not work to change those conclusions in the least. As such, the General Assembly's decision not to entitle the Defendant to a second hearing does not subject him to cruel and unusual punishment. *See Black*, 866 F.3d at 750; *Byron Lewis Black*, 2005 WL 2662577, at *17. This claim is without merit.

III. DUE PROCESS PROTECTIONS

The Defendant contends that "[d]ue [p]rocess is violated by a fundamentally unfair interpretation of subsection (g)(2)." The State responds that the Defendant's due process rights have been satisfied because the issue of the Defendant's intellectual disability has been previously adjudicated. We agree with the State.

"The federal and state constitutions explicitly guarantee the right to due process of law." *State v. Decosimo*, 555 S.W.3d 494, 506 (Tenn. 2018); *see* U.S. Const. amend. XIV; Tenn. Const. art. I, § 8. "These constitutional provisions have been described as 'synonymous' in the scope of protection they afford." *Decosimo*, 555 S.W.3d at 506 (quoting *Gallaher v. Elam*, 104 S.W.3d 455, 463 (Tenn. 2003)). "Due process, at its most basic level, 'mean[s] fundamental fairness and substantial justice.'" *State v. White*, 362 S.W.3d 559, 566 (Tenn. 2012) (quoting *Vaughn v. State*, 456 S.W.2d 879, 883 (1970)).

The Defendant argues that by interpreting subsection (g)(2) "so that it capriciously permits some defendants to receive the protection of the Eighth Amendment, but that it precludes others from constitutional relief is fundamentally unfair . . . ." In support of this contention, the Defendant asserts that "before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires

that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner." *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992).

Inherent in the Defendant's argument is that any "interpretation" of subsection (g)(2) which is adverse to him is somehow "fundamentally unfair" as a matter of policy. We respectfully disagree. Properly conceived, the judicial power is not a grant of authority for courts to choose between optimal goals for advancing public policy. *Coffman v. Armstrong Int'l, Inc.*, 615 S.W.3d 888, 899 (Tenn. 2021) ("We reiterate that the language of the TPLA dictates our decision here, and we do not opine on what we perceive to be the optimal outcome of this case in terms of public policy."). And courts do not review a "statute's wisdom, expediency, reasonableness, or desirability. These are matters entrusted to the electorate, not the courts." *Waters v. Farr*, 291 S.W.3d 873, 918 (Tenn. 2009) (Koch, J., concurring) (citations and footnotes omitted).

In other words, courts interpret statutes according to neutral legal principles without regard to "'what its members believe to be the best policy for the State; rather, [courts] must determine where public policy is to be found, what the specific public policy is, and how it is applicable to the case at hand.'" *State v. Al Mutory*, 581 S.W.3d 741, 750 (Tenn. 2019) (quoting *Smith v. Gore*, 728 S.W.2d 738, 746 (Tenn. 1987)). We respectfully disagree that an interpretation of subsection (g)(2) compelled by its plain language is somehow "fundamentally unfair" to the Defendant.

Of course, "'[d]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *Seals v. State*, 23 S.W.3d 272, 277 (Tenn. 2000) (quoting *Phillips v. State Bd. of Regents*, 863 S.W.2d 45, 50 (Tenn. 1993)). However, the Defendant has not been denied an opportunity to be heard "at a meaningful time and in a meaningful manner." *Id.* He exercised his opportunity to have the issue of his intellectual disability adjudicated, and he was found to not have an intellectual disability under standards and definitions that the 2021 amendments did not change. The General Assembly's decision not to grant the Defendant additional opportunities to relitigate this issue does not deny him due process of law. *See Est. of Alley v. State*, 648 S.W.3d 201, 231 (Tenn. Crim. App. 2021).

IV. EQUAL PROTECTION OF THE LAW

Finally, the Defendant maintains that his "right to equal protection is violated if he is denied the benefit of the 2021 [amendments to Tennessee Code Annotated section 39-13-203] while similarly situated individuals receive relief." The State responds that the Defendant "is 'similarly situated' only to death row inmates who have been previously determined not to be intellectually disabled. And prohibiting those prisoners from re-

adjudicating whether they are intellectually disabled poses no equal protection concerns." We agree with the State.

"The right to equal protection is guaranteed by the Fourteenth Amendment of the United States Constitution . . . [and] by Article I, section 8, and Article XI, section 8, of the Tennessee Constitution." *McClay v. Airport Mgmt. Servs., LLC*, 596 S.W.3d 686, 695 (Tenn. 2020); *see State v. Jenkins*, 15 S.W.3d 914, 918 n.2 (Tenn. Crim. App. 1999). "While recognizing that '[t]he equal protection provisions of the Tennessee Constitution and the Fourteenth Amendment are historically and linguistically distinct,' this Court has stated that Article I, § 8 and Article XI, § 8 of the Tennessee Constitution confer 'essentially the same protection' as the equal protection clause of the United States Constitution." *State v. Tester*, 879 S.W.2d 823, 827 (Tenn. 1994) (quoting *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993)). Our supreme court has explained:

> The concept of equal protection espoused by the federal and our state constitutions guarantees that all persons similarly circumstanced shall be treated alike. Conversely, things which are different in fact or opinion are not required by either constitution to be treated the same. The initial discretion to determine what is 'different' and what is the same resides in the legislatures of the States, and legislatures are given considerable latitude in determining what groups are different and what groups are the same.

Doe v. Norris, 751 S.W.2d 834, 841 (Tenn. 1988) (internal quotation marks and citations omitted); *see State v. Robinson*, 29 S.W.3d 476, 480 (Tenn. 2000). The primary question is "whether the classes of persons at issue are similarly situated; if not, then there is no basis for finding a violation of the right to equal protection. In evaluating whether two classes are similarly situated, courts focus on relevant similarit[ies] between the groups but should not demand exact correlation." *City of Memphis v. Hargett*, 414 S.W.3d 88, 110 (Tenn. 2013) (internal quotation marks and citations omitted); *see State v. March*, 395 S.W.3d 738, 787 (Tenn. Crim. App. 2011).

The Defendant contends that "[t]he reality of the disparate treatment is most obvious" when the Defendant's situation is compared "with that of the first individual to receive relief under [the 2021 amendments to Tennessee Code Annotated section 39-13-203], Pervis Payne." The Defendant acknowledges, "Procedurally, the only distinction between Mr. Payne's case and Mr. Black's is that Mr. Payne's lawyers did not seek relief following *Atkins* and *Van Tran*, while Mr. Black's attorneys were more zealous."

However, while the Defendant seeks to minimize this distinction, we believe that it *is* important. Unlike other capital defendants who have not had a hearing to adjudicate the issue of their intellectual disability, the Defendant here is in a different class: the issue of

his intellectual disability *has been* previously adjudicated. And even if we were to compare the Defendant with the larger class of all capital defendants who wish to seek an intellectual-disability hearing, we agree with the State that subsection (g)(2) still does not violate any defendant's right to equal protection of the law. The statute grants each capital defendant, including the Defendant, the right to receive the same procedural benefit: a single adjudication. Because the Defendant is not being treated differently from similarly situated persons, we conclude that the General Assembly's decision not to grant the Defendant additional opportunities to revisit this issue does not deny him the equal protection of the law.

CONCLUSION

In summary, we hold that, because the issue of the Defendant's intellectual disability has been previously adjudicated, he may not file a motion pursuant to Tennessee Code Annotated section 39-13-203(g)(1). We also hold that the General Assembly's decision not to entitle the Defendant to a second hearing does not subject him to cruel and unusual punishment, nor does it deny him due process of law or the equal protection of the law. We respectfully affirm the judgment of the trial court.

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TOM GREENHOLTZ, JUDGE