

**SUPREME COURT OF LOUISIANA**

**No. 13-KP-2422**

**STATE OF LOUISIANA**

**v.**

**MICHAEL WEARRY**

**CRICHTON, J., dissents**

I dissent from the majority’s denial of this writ application. In my view, this writ should be granted and the case remanded to the trial court to directly and fully address the issue of whether defendant is intellectually disabled<sup>1</sup> and entitled to the protections of *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), and it should not be considered under the vast umbrella of the defendant’s claim of ineffective assistance of counsel. Specifically, I believe the trial court erred by conflating the *Atkins* claim with the ineffective assistance of counsel claim, thereby underweighting the defendant’s *Atkins* claim. As such, I would grant this writ application and remand it

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<sup>1</sup> The term “intellectually disabled” was adopted by the United States Supreme Court in *Freddie Lee Hall v. Florida*, 134 S. Ct. 1986, 1991, 188 L.Ed.2d 1007 (2014):

Previous opinions of this Court have employed the term “mental retardation.” This opinion uses the term “intellectual disability” to describe the identical phenomenon. See Rosa's Law, 124 Stat. 2643 (changing entries in the U.S. Code from “mental retardation” to “intellectual disability”); Schalock et al., The Renaming of Mental Retardation : Understanding the Change to the Term Intellectual Disability, 45 *Intellectual & Developmental Disabilities* 116 (2007). This change in terminology is approved and used in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders, one of the basic texts used by psychiatrists and other experts; the manual is often referred to by its initials “DSM,” followed by its edition number, e.g., “DSM–5.” See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 33 (5th ed. 2013).

to the trial court to reconsider the evidence adduced pertaining to defendant's *Atkins* claim, and allow the district attorney and defense counsel to supplement and further develop the record on whether the defendant is actually intellectually disabled. If the defendant is deemed intellectually disabled and afforded the protections under *Atkins*, he is exempt from the death penalty and that claim, in my opinion, cannot be procedurally defaulted.