

High court rules defendants can't claim retardation as adults

By KRISTIN M. HALL Aug 15, 6:18 PM EDT

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NASHVILLE, Tenn. (AP) -- The Tennessee Supreme Court ruled that inmates who try to avoid the death penalty based on a claim of mental retardation can't rely on tests taken as adults to prove they have the disorder.

In a unanimous decision filed Tuesday, the high court affirmed an appeals court finding that Danny Strode is eligible for the death penalty in the beating death of a Bledsoe County store owner during a 2001 robbery because intelligence tests taken when he was a juvenile didn't show signs of retardation, although later testing did.

Death penalty experts said the court ruling likely will limit defense attempts to use mental retardation to fight a capital sentence. It will have no effect on the state's prohibition on executing inmates who showed signs of mental retardation before adulthood.

The court's opinion noted that Tennessee law prohibits executing "any defendant with mental retardation at the time of committing first-degree murder." The U.S. Supreme Court also has banned executing the mentally retarded.

But the state Supreme Court referred to a Tennessee statute that requires "mental retardation must have been manifested during the developmental period, or by 18 years old."

Strode was 20 years old when police say he beat to death Harvey J. Brown during an aggravated robbery on Dec. 17, 2001. Before his 18th birthday, IQ tests showed a range between 75 to 88. State law uses a score of 70 or less to determine mental retardation.

However, Strode scored a 69 on a test three years after the crime. The state sought the death penalty, but the trial court concluded that the developmental period does not necessarily end at age 18.

The high court relied on the statute's legislative history as well as tape recordings in which lawmakers discussed the legislation to rule in favor of the state.

"The proof in the record is that although the defendant had his IQ tested at least four times before reaching the age of 18, he never scored 70 or below on any of those occasions," wrote Justice Cornelia A. Clark.

The opinion says that the practical effect of a trial court ruling that a defendant is mentally retarded before he is tried for the crime is that the state loses the option to pursue the death penalty, even in appeals.

"Based on an exhaustive review of the legislative history of the statute, this Court's prior understanding of the terms and a survey of other jurisdictions, we conclude that the language 'during the developmental period, or by the age of 18' does not include the years past the age of eighteen," Clark wrote.

Strode's attorney didn't immediately return a call seeking comment Wednesday.

Stacy Rector, executive director of Tennessee Coalition to Abolish State Killing, said the ruling caps mental development at age 18.

"The brain continues development into early adulthood," Rector said. "The development period could in fact go beyond 18 years of age. It seems very arbitrary to make that decision."

Rector said that many inmates on death row struggle with mental illness and she understands how claims of mental retardation could be used to avoid the death penalty.

David Raybin, a constitutional scholar and Nashville attorney, said that most legal definitions of mental retardation require evidence that the disorder developed during childhood.

"Otherwise a person could flunk every test intentionally," Raybin said. "But if the proof shows that he was retarded as a juvenile, that is powerful evidence to corroborate the current claim of mentally retardation."

Raybin pointed out Strode could still claim mental disability before a jury, but the ruling allows the state to keep the option of the death penalty in his case.

In 1990, the Tennessee General Assembly prohibited the execution of any defendant with mental retardation at the time of committing first-degree murder.

The state Supreme Court ruled in 2001 that executing the mentally retarded is impermissibly cruel punishment under the state and federal constitutions.