

SUPREME COURT OF LOUISIANA

No. 07-KP-2451

STATE OF LOUISIANA

v.

WILLIE LEE TART

On Writ of Certiorari to the
Fourth Judicial District Court
Parish of Ouachita
The Hon. C. Wendell Manning, Judge

PER CURIAM:

Writ granted; case remanded to the district court. Pursuant to O'Sullivan v. Boerckel, 526 U.S. 838, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999), when a state provides a two-tier system of review, the petitioner must seek relief at both levels of review to satisfy exhaustion requirements for federal habeas corpus proceedings. See also Castille v. Peoples, 489 U.S. 346, 351, 109 S.Ct. 1056, 60, 103 L.Ed.2d 380 (1989) (exhaustion requirement not satisfied by “submission of a new claim to a State’s highest court on discretionary review”). Accordingly, our denial of writs in State ex rel. Tart v. State, 02-2132 (La. 11/26/03), 860 So.2d 1126, in which relator sought relief on the basis of the intervening decision in Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (execution of mentally retarded persons constitutes an excessive punishment and thus violates the Eighth Amendment) without presenting the claim first to the district court does not preclude further proceedings designed to produce a definitive answer to the question of whether relator is mentally retarded and so exempt from capital

punishment. Given the retroactivity of Atkins to death row inmates on collateral review, see State ex rel. Edwards v. State, 02-0514 (La. 3/21/03), 841 So.2d 768; see also Bell v. Cockrell, 310 F. 3d 330, 332 (5th Cir. 2002)(same) (citing Penry v. Lynaugh, 492 U.S. 302, 330, 109 S.Ct. 2934, 2953, 106 L.Ed.2d 256 (1989)), the district court is ordered to make a substantive ruling on whether relator qualifies as mentally retarded under Atkins and is hence ineligible for execution. See State v. Dunn, 02-0878, p. 7 (La. 1/25/08), 974 So.2d 658, 662-63. Although the district court has already taken evidence on the Atkins issue, it may conduct further evidentiary proceedings as it deems necessary to address the claim fully on the merits. Relator may seek review in this Court from any adverse ruling by the district court.