

TIBA's Case of the Week Court of Criminal Appeals

Case Name: [Ex parte Clarence Curtis Jordan](#)

- **NATURE OF CASE:** Post-Conviction *Habeas Corpus* / Death Sentence
- **COUNTY:** Harris
- **CCA. CASE No.** WR-17,434-02 **DATE OF OPINION:** April 9, 2026
- **DISPOSITION:** New Punishment Ordered
- **OPINION:** [Per Curiam](#) **VOTE:** 9-0
- **TRIAL COURT:** 184th D/C
- **LAWYERS:** [Guillermina Passa](#) & [Benjamin Wolff](#) (Defense)

(**Background Facts**): In 1978, a Harris County jury convicted Applicant of capital murder and he was sentenced to death. He was represented on appeal by two legendary Texas criminal defense lawyers, Ken (“Dude”) McLean and Roy Greenwood, and the conviction was reversed. [Jordan v. State](#), 635 S.W.2d 522 (Tex.Cr.App. 1982). In 1983, he was again convicted and sentenced to death. That conviction and the sentence were affirmed in unpublished opinion in 1986. His first post-conviction *habeas corpus* application resulted in the Court deeming Applicant incompetent to be executed, pursuant to [Ford v. Wainwright](#), 477 U.S. 399 (1986), and his execution was “stayed until the trial court finds him competent for execution.” [Ex parte Jordan](#), 758 S.W.2d 250 (Tex.Cr.App. 1988). As per this opinion, “Over the past thirty-five-plus years, Applicant has apparently remained incompetent to be executed.”

[§§ 321.02 Court’s Charge / Special Issues (Mitigation “Nullification” Instruction)]: Applicant filed his first subsequent *habeas* application in May of 2025. In his primary claim (Claim One), Applicant invokes [Penry v. Lynaugh](#), 492 U.S. 302 (1989), arguing that he is entitled to a new punishment trial due to inadequate jury instructions given at his 1983 trial. In an alternative claim (Claim Two), relying on [Atkins v. Virginia](#), 536 U.S. 304 (2002)(see §, [Vol. 10, No. 26](#); 07/01/2002), Applicant alleges that he is intellectually disabled and therefore categorically immune from execution.

Holding: In [Penry](#), the Supreme Court determined that the defendant’s death sentence offended the Eighth Amendment because the former punishment phase special issues submitted to his jury did not provide an adequate vehicle for meaningfully considering and giving effect to his

double-edged evidence of intellectual disability and childhood abuse. Since delivering *Penry*, the Supreme Court has identified additional kinds of two-edged evidence that require a separate mitigation instruction allowing the jury to give that evidence full consideration and effect. See *Tennard v. Dretke*, 542 U.S. 274 (2004)(intellectual disability, low intelligence falling short of intellectual disability); *Smith v. Texas*, 543 U.S. 37 (2004)(low intelligence, placement in special education classes); *Abdul-Kabir v. Quarterman*, 550 U.S. 233 (2007)(unhappy, disturbed childhood; childhood neglect and abandonment; neurological damage); *Brewer v. Quarterman*, 550 U.S. 286, 296 (2007)(mental illness, including depression; substance abuse). *** In the years following these Supreme Court decisions, this Court has also found that the special issues as they existed in the pre-*Penry* era were inadequate to allow a jury to consider and give effect to the types of mitigating evidence described above. See *Ex parte Hood*, 304 S.W.3d 397 (Tex.Cr.App. 2010)(see ¶¶, [Vol. 18, No. 8](#); 03/01/2010)(severe childhood injuries resulting in negative changes in behavior and permanent physical disabilities, speech defects, learning disabilities and cognitive impairments, low IQ, child abuse); *Ex parte Smith*, 309 S.W.3d 53 (Tex.Cr.App. 2010)(see ¶¶, [Vol. 18, No. 17](#); 05/03/2010)(poverty, crime-ridden neighborhood, drug abuse); *Ex parte Moreno*, 245 S.W.3d 419 (Tex.Cr.App. 2008)(see ¶¶, [Vol. 16, No. 5](#); 02/11/2008)(troubled or disruptive childhood); *Ex parte Martinez*, 233 S.W.3d 319 (Tex.Cr.App. 2008)(psychiatric problems, alcohol abuse, and a troubled childhood). *** *Penry* error occurred in this case. The mental and neurological health evidence that Applicant presented at his trial is the type of evidence that both the Supreme Court and this Court have come to regard as the kind of “two-edged” mitigating evidence calling for a separate, mitigation-focused jury instruction. *** Applicant’s jury did not receive such an instruction. And, whatever harm analysis rightly applies in this situation, we conclude that the absence of a *Penry* compliant jury instruction at Applicant’s trial was harmful. Accordingly, Applicant’s death sentence can no longer stand.

Sidebars

([John G. Jasuta](#)) Now, 43 years after his second trial, I would wonder if the State will try to do something that will keep Mr. Jordan in custody. It’s at times like these I remember Lee Hays and Cisco Houston’s immortal cry - “They mighta hung me.” [The Kingston Trio, “Bad Man’s Blunder” © 1960].

([David A. Schulman](#)) This is some **excellent** work by the Office of Forensic and Capital Writs. Additionally, there are several other grants of *Penry* relief which are not mentioned in this opinion, but which are still important: ❶ *Ex parte Rabbani*, No. WR-86,593-01 (Tex.Cr.App. 09/06/2023)(see ¶¶, [Vol. 31, No. 31](#); 09/11/2023); ❷ *Ex parte Riles*, 620 S.W.3d 830 (Tex.Cr.App. 2021)(see ¶¶, [Vol. 29, No. 14](#); 04/19/2021); ❸ *Ex parte Fierro*, Nos. WR-17,425-03 and WR-17,425-06 (Tex.Cr.App. 12/18/2019)(see ¶¶, [Vol. 27, No. 49](#); 12/23/2019); ❹ *Ex parte Wheatfall*, No. WR-81,585-01 (Tex.Cr.App. 02/04/2015)(see ¶¶, [Vol. 23, No. 6](#); 02/09/2015); ❺ *Ex parte Nelson*, AP-77,010 (Tex.Cr.App. 03/27/2013)(see ¶¶, [Vol. 21, No. 13](#); 04/01/2013); and ❻ *Ex parte Rachal*; No. AP-76,720 (Tex.Cr.App. 02/01/2012)(see ¶¶, [Vol. 20, No. 5](#); 02/06/2012). The last one is the most important to me

because, although not involved in that case, I had raised the same Penry claim in the “-01a” application about 15 years earlier.