

04/01/2010 "See News Release 024 for any Concurrences and/or Dissents.

SUPREME COURT OF LOUISIANA

No. 10-KP-0240

STATE EX REL MICHAEL WEARRY

VERSUS

BURL CAIN, WARDEN, ET AL

**ON WRIT OF CERTIORARI TO THE TWENTY-FIRST JUDICIAL
DISTRICT COURT, PARISH OF LIVINGSTON**

ORDER

Granted in part. The district court's order denying relator's motion to bifurcate his claim that he is mentally retarded and so exempt from capital punishment under the decision in Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), from his claims for post-conviction relief in a supplemental application he must file on or before May 6, 2010, is affirmed. However, relator may have an additional 60 days from the present due date to file his supplemental application, which shall include all claims addressing the merits of the guilt and penalty phases of trial. The petition shall also include any claim of an Atkins exemption from capital punishment. The district court shall determine which claims, if any, warrant an evidentiary hearing as a matter of La.C.Cr.P. art. 930, and may exercise its discretion in determining how to conduct the proceedings. La.C.Cr.P. art. 17 ("[A court] has the duty to require that criminal proceedings shall be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done."). To the extent that the procedure approved in State ex rel. Miller v. Cain, 08-0716 (La. 4/16/08), 979 So.2d 1271, in which the district court exercised its discretion to bifurcate the Atkins claim from post-conviction claims, is inconsistent with this order, it is

superseded.