

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

[NAME],

Case No. X-X-XX-XXX

Petitioner,

vs.

District Judge [NAME]

Magistrate Judge [NAME]

[NAME], Warden,

Respondent.

ORDER VACATING STAY

On [DATE], Petitioner filed his Thirteenth Status Report (Doc. No. XXX), advising that the Hamilton County Common Pleas Court, having previously determined that Petitioner may not be executed consistent with *Atkins v. Virginia*, 536 U.S. 304 (2002), had re-sentenced Petitioner to three consecutive sentences for aggravated murder, attempted rape, and kidnapping.

On [DATE], this Court ordered that the pending Petition for Writ of Habeas Corpus be held in abeyance pending Petitioner's exhaustion of his available state court remedies for his claim under *Atkins v. Virginia*, 536 U.S. 304 (2002) (Doc. No. XXX). The evidentiary hearing in this case had been held on November 20-21, 2000, and the case was ripe for decision on post-hearing briefs at the time *Atkins* and *State v. Lott*, 97 Ohio St. 3d 303, 779 N.E. 2d 1011 (2002), were decided.

Based on the Common Pleas Court's vacation of the death sentence, it appears to this Court that any claims made in the Second Amended Petition (Doc. No. XXX) related to the penalty are moot. It further appears that the Petitioner has exhausted, successfully, the state court remedies on the basis of whose availability this case was stayed.

Accordingly, the stay is DISSOLVED and the Court deems the case ripe for decision as of the date of this Order. If either party desires to file any additional briefing in light of developments in the more than six years since this case was briefed, they shall seek leave to do so not later than [DATE].

[DATE].

[NAME]
United States Magistrate Judge