

**COMMONWEALTH OF KENTUCKY
POWELL CIRCUIT COURT
DIVISION I
INDICTMENT NO. 79-CR-24**

ELECTRONICALLY FILED

KARU WHITE

MOVANT

v.

COMMONWEALTH OF KENTUCKY

RESPONDENT

NOTICE

Undersigned counsel has contacted the Court's staff to schedule this motion for a hearing at the Court's earliest convenience.

MOTION TO REMOVE FROM ABEYANCE

Karu White has filed a post-conviction motion challenging his death sentence on the basis that he allegedly is intellectually disabled. This case, however, has been in abeyance for many years. Because the Commonwealth has retained an expert to counter White's contention that he is intellectually disabled, the Commonwealth moves to return this case to the active docket so that the parties and the Court may discuss next steps in moving this case forward.

BACKGROUND

Almost 50 years ago, White committed one of the most depraved crimes in Kentucky's history. He and two accomplices killed three elderly Kentuckians in a "horrific home invasion." *White v. Plappert*, 131 F.4th 465, 471–72 (6th Cir. 2025) (*White II*). White was a "lifelong friend" of two of the victims. *Id.* at 472. Those who

investigated the crimes “testified that it was the most brutal murder they’d ever worked.” *Id.* “The coroner likened the scene to a slaughterhouse.” *Id.* For his crimes, White received the death penalty. *Id.* at 474. As of this year, White’s state and federal appeals are *finally* exhausted. *White v. Plappert*, --- S. Ct. ---, 2026 WL 189839 (U.S. Jan. 26, 2026) (denying certiorari in White’s federal habeas matter).

While White’s many appeals wound their way through the courts, he and the Commonwealth have simultaneously litigated his intellectual-disability claim. As the Kentucky Supreme Court recounted, “[l]ess than a month after he was sentenced, White was subjected to a psychological evaluation by a ‘Contract Psychologist,’ Henry S. Davis, Ph.D. Dr. Davis determined that White had an overall intelligence quotient (IQ) score of 81.” *White v. Commonwealth*, 500 S.W.3d 208, 210 (Ky. 2016) (*White I*), *abrogated by Woodall v. Commonwealth*, 563 S.W.3d 1 (Ky. 2018). Despite this IQ score,¹ after the Supreme Court decided *Atkins v. Virginia*, 536 U.S. 304 (2002), White filed a motion in this Court to set aside his death sentences on the basis that he is intellectually disabled. White filed this motion in 2004—over two decades ago. *White I*, 500 S.W.3d at 211.

White’s *Atkins* motion, unfortunately, has not been resolved. The blame lies almost entirely with White. *See White II*, 131 F.4th at 475 (noting that White “‘refused’ to present the merits of [his *Atkins*] claim in state court for the next nine years”). After this Court determined that the Kentucky Correctional Psychiatric

¹ As the Kentucky Supreme Court noted, White’s IQ score of 81 was “well above” the then-applicable threshold for an intellectual disability. *White*, 500 S.W.3d at 211.

Center (KCPC) was qualified to evaluate him for an intellectual disability, White simply refused to be evaluated. *White*, 500 S.W.3d at 211–12. White’s refusal to be evaluated at KCPC, this Court ruled back in 2013, meant that White had waived his *Atkins* claim. *Id.* at 212. On appeal, the Kentucky Supreme Court agreed that KCPC could provide a competent review of White’s mental capacity, *id.* at 213, but the high court reversed this Court’s waiver holding, *id.* at 215. In the Kentucky Supreme Court’s view, “[b]y continuing to refuse to be examined, to his great risk of not being spared, [White] simply fails in proving his ineligibility for his death sentence. However, he does not waive such a claim in the normal sense that we know the term.” *Id.* at 215. As a result, the Kentucky Supreme Court remanded this matter to this Court. *Id.* at 217.

On remand, White filed an amended *Atkins* motion. (June 5, 2017 Amended Motion.) Among other things, White’s motion asked the Court to impose “limitations” on KCPC’s evaluation of him. (*Id.* at 4, 39–45.) The Commonwealth opposed that motion. (August 4, 2017 Response.) The Commonwealth asked that White be “transported to KCPC” and that KCPC “conduct a 30-day intellectual disability evaluation.” (*Id.* at 2.) These issues, however, were never resolved.

On August 28, 2017, the parties filed a joint motion to place this case in abeyance. (August 28, 2017 Joint Motion.) The Attorney General at the time, now almost a decade ago, was current Governor Andy Beshear. The joint motion requested that this case be held in abeyance pending the resolution of a case in the Kentucky Supreme Court. (*Id.* at 1.) Almost a year later, the parties filed a joint motion to

continue the abeyance, this time based on another Kentucky Supreme Court case. (June 27, 2018 Joint Motion.) On January 17, 2019, the parties filed a “joint notice” asking that this case remain in abeyance. (January 17, 2019 Joint Notice.) A similar joint notice was filed in March 2020. (March 30, 2020 Joint Notice.) This joint notice asked that this matter remain in abeyance “at least until the conclusion of an evidentiary hearing” in a case pending in Jefferson Circuit Court. (*Id.* at 1.)

By all appearances, this case has remained on this Court’s docket since without substantive action. Relevant here, the most notable filing in recent years came in October 2019.² Despite unsuccessfully litigating for years about whether the Commonwealth had to pay for White to secure his own intellectual-disability expert, *White I*, 500 S.W.3d at 212–13, White informed the Court that he now has an expert, Dr. John Fabian. (October 25, 2019 Notice of Filing). And despite White refusing for years to allow KCPC to evaluate him, *White I*, 500 S.W.3d at 215, White allowed Dr. Fabian to evaluate him—afterward, Dr. Fabian determined that White has an IQ of 67. (October 25, 2019 Letter.)

The Commonwealth recently retained an intellectual-disability expert for this matter, Dr. Gregory A. Prichard. As a result, the Commonwealth now moves to remove this matter from abeyance.

ARGUMENT

The Court should lift this matter from abeyance for three reasons.

² In 2021, White filed a motion to rescind the special-judge appointment in this case. (February 9, 2021 Motion to Return Case.) Although the Commonwealth did not oppose that motion at the time (under a prior Attorney General), the Commonwealth wishes to move this matter forward now as expeditiously as possible.

First, the state of play has changed considerably since this case went into abeyance almost a decade ago. Most notably, Attorney General Coleman has made it a priority to move death-penalty litigation like this to finality. Relevant to White, in March 2025, the Sixth Circuit rejected White’s federal habeas petition. As the panel summed up, “[d]espite years of delay, the truth persists: neither the law nor justice stand in the way of [White’s] sentence.” *White II*, 131 F.4th at 502 (footnote omitted). After losing in the Sixth Circuit, White petitioned for certiorari—represented by a former United States Solicitor General. The Supreme Court, however, summarily denied his petition earlier this year. As a result, all of White’s state and federal appeals are now exhausted—almost a half century after he committed his horrific crimes. With finality achieved, now is the right time to resolve White’s *Atkins* claim.

Second, as noted above, up to this point, the Commonwealth and White have exhaustively litigated whether KCPC can evaluate White for an intellectual disability. That dispute, however, no longer stands in the way of resolving this matter. White has retained his own intellectual-disability expert, and the Commonwealth has retained its own expert. Given that this matter is teed up for a battle of the experts, there is no reason to continue holding this matter in abeyance.

And third, the lengthy abeyance in this matter is causing real harm to the Commonwealth and to the friends and families of the victims of White’s crimes. The United States Supreme Court has recognized that “[o]nly with real finality can the victims of crime move forward knowing the [jury’s] moral judgment will be carried out.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). Indeed, “[t]o unsettle these

expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike.” *Id.* (cleaned up). White committed his crimes in 1979. This case should not remain in abeyance a day longer.

White will no doubt respond that the circuit court matter referenced in the March 2020 abeyance notice is not yet final. *Commonwealth v. Larry Lamont White*, No. 07-CR-004230 (Jefferson Cir. Ct.). That is true. An evidentiary hearing occurred in that matter in October 2024. And last month, the Commonwealth moved the Jefferson Circuit Court to rule on the pending intellectual-disability motion, noting the lengthy delay. But even if the Jefferson Circuit Court rules tomorrow, that decision will no doubt be appealed. As a result, finality in that separate matter is very likely years away. In any event, the Jefferson Circuit Court’s resolution of that matter is immaterial to determining next steps in this case. After all, although a circuit court decision binds the parties in the particular case, “[a] trial court’s decision has ‘no precedential value.’” *Bell v. Commonwealth*, 423 S.W.3d 742, 751 (Ky. 2014) (citation omitted); *see also Commonwealth v. McCuiston*, 729 S.W.3d 197, 205 (Ky. App. 2026) (“There is no authority to support the proposition that a circuit court opinion . . . has precedential value.”). It follows that there is no reason to continue waiting for the Jefferson Circuit Court to rule in a separate matter involving a different inmate that will not in any way bind this Court. The Court should resolve this matter without delay and let Kentucky’s appellate courts sort out any overlap with the Jefferson Circuit Court matter if and when it is appealed.

CONCLUSION

For these reasons, the Court should lift this matter from abeyance. The Commonwealth, through Attorney General Coleman, is ready to move this matter promptly to finality.

Respectfully submitted,

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CERTIFICATION

This is to certify that I e-filed this document on August 28, 2026. I also mailed the foregoing first-class, postage pre-paid, this day to:

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**ORDER GRANTING
MOTION TO REMOVE FROM ABEYANCE**

COMMONWEALTH OF KENTUCKY

RESPONDENT

This matter is before the Court on the Commonwealth's motion to remove this case from abeyance. Having considered the matter, and being otherwise fully and sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Commonwealth's motion is **GRANTED**.

This Court will schedule a status conference to discuss the next steps in this case.

So Ordered this _____ day of _____, 2026.

JUDGE, POWELL CIRCUIT COURT

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08/28/2026

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08/28/2026

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