

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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In re: MICHAEL WAYNE HOWELL,  
Movant.

No. 07-6218

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ORDER  
Filed September 12, 2007

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Before **LUCERO, McCONNELL, and TYMKOVICH**, Circuit Judges.

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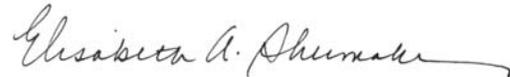
Michael Wayne Howell seeks authorization under 28 U.S.C. § 2244(b)(3) to file a second or successive habeas petition under 28 U.S.C. § 2254 challenging the State's intention to put him to death. Mr. Howell alleges that he is mentally retarded and that his execution is barred by the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002).

Under § 2244(b)(2)(A), a second or successive habeas petition may be authorized if it involves "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." Based upon our review of the materials submitted, we conclude that Mr. Howell "has made the 'prima facie showing,' required by § 2244(b)(3)(C), that his claim satisfies the conditions for proceeding on a second or successive habeas petition under the new-rule-of-law provision in § 2244(b)(2)(A)," *Ochoa v. Sirmons*, 485 F.3d 538, 539 (10th Cir. 2007).

Accordingly, we GRANT Mr. Howell authorization to pursue a second or successive habeas petition raising an *Atkins* challenge to his death sentence. This

decision is not appealable and may not be the subject of a petition for rehearing or a petition for a writ of certiorari. 28 U.S.C. § 2244(b)(3)(E). Steven M. Presson is appointed to represent Mr. Howell under 18 U.S.C. § 3006A in this court in connection with this motion for authorization to file a second or successive habeas petition. Also in connection with this proceeding, Mr. Presson is relieved of the obligation of submitting additional hard copies of his motions to the court. The e-submissions already on file shall constitute the original pleadings in this matter.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

Elisabeth A. Shumaker, Clerk of Court