

08-598 BOBBY V. BIES

DECISION BELOW:519 F.3d 324

LOWER COURT CASE NUMBER: 06-3471

QUESTIONS PRESENTED:

1. Did the Sixth Circuit violate the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") when, in overruling an Ohio post-conviction court on double jeopardy grounds, it crafted a new definition of "acquittal" that conflicts with this Court's decisions?

2. Do the Double Jeopardy Clause's protections apply to a state post-conviction hearing on the question of a death-sentenced inmate's mental retardation under *Atkins v. Virginia*, 536 U.S. 304 (2002), that does not expose the inmate to the risk of any additional criminal punishment?

3. Did the Sixth Circuit violate AEDPA when it applied the Double Jeopardy Clause's collateral estoppel component to enjoin an Ohio post-conviction court from deciding the issue of a death-sentenced inmate's mental retardation under *Atkins* even though the Ohio Supreme Court did not actually and necessarily decide the issue on direct review?

CERT. GRANTED 1/16/2009

EXPEDITED BRIEFING SCHEDULE.