IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE,	)	
	)	
Appellant,	)	
	)	**SHELBY COUNTY**
v.	)	**No. W2022-00210-SC-R11-CD**
	)	
PERVIS TYRONE PAYNE,	)	
	)	
Appellee.	)	

ON APPEAL BY PERMISSION FROM THE JUDGMENT OF THE COURT OF CRIMINAL APPEALS

BRIEF OF THE STATE OF TENNESSEE

JONATHAN SKRMETTI
Attorney General and Reporter

J. MATTHEW RICE
Solicitor General

EDWIN ALAN GROVES, JR.
Assistant Attorney General
Criminal Appeals Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-2850
Alan.Groves@ag.tn.gov
B.P.R. No. 036813

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES AND RULES

OTHER AUTHORITIES

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether a trial court lacks jurisdiction to reconsider the consecutive alignment of a defendant's original sentences after a determination of intellectual disability pursuant to a petition under Tenn. Code Ann. § 39-13-203(g).

INTRODUCTION

Single mother Charisse Christopher lived in a small apartment with her two young children, Nicholas and Lacie. After hours of drinking, drugs, and pornographic magazines, Pervis Payne entered that apartment and ruthlessly attacked the Christopher family with a butcher knife. Police found Charisse dead, with 41 stab wounds and a used tampon next to her body. They found 2-year-old Lacie dead, with 9 stab wounds. They found 3-year-old Nicholas barely alive, struggling to hold his intestines in his body. And they found a blood-covered Payne running down the apartment stairwell. After hearing "overwhelming and relatively uncontroverted evidence" of Payne's guilt, *Payne v. Tennessee*, 501 U.S. 808, 813 (1991), a jury convicted Payne and imposed two death sentences, which the trial court aligned consecutively to ensure that Payne would never go free. Multiple courts affirmed Payne's convictions and sentences on direct and collateral review.

A decade after Payne decimated the Christopher family, this Court and the U.S. Supreme Court held that the Tennessee and Federal Constitutions prohibit execution of the intellectually disabled. To ensure that previously sentenced defendants were not unconstitutionally executed, this Court "encourage[d] the General Assembly" to pass a law ensuring that all capital defendants have an opportunity to seek an intellectual-disability determination. *Payne v. State*, 493 S.W.3d 478, 492 (Tenn. 2016).

The General Assembly did just that. It created a narrow procedural path for capital defendants like Payne to "set forth a colorable claim that" they are "ineligible for the death penalty due to intellectual disability."

Tenn. Code Ann. § 39-13-203(g)(1). And it authorized trial courts, in turn, to do one thing: make an intellectual-disability determination. The General Assembly did *not* authorize freewheeling reassessments of long-final sentences. Nothing in the text of § 203(g) grants that authority. And nothing about the statute's purpose, context, or background suggests that the General Assembly sought to allow courts to do anything more than make an intellectual-disability determination to prevent the unconstitutional execution of intellectually disabled defendants.

But none of this stopped the trial court from assuming authority to reconsider Payne's sentences according to its own notions of "fundamental fairness." (III, 415). The Shelby County District Attorney conceded that Payne is intellectually disabled and, therefore, not eligible for the death penalty. Yet rather than simply accepting that concession, the trial court assumed plenary resentencing authority. It realigned Payne's murder sentences to run concurrently instead of consecutively—meaning that Payne would spend not *even one additional day* in prison for the brutal murder of 2-year-old Lacie Christopher. No statute permits that gross affront to jurisdictional limits—or justice.

The Court should reverse.

STATEMENT OF THE CASE AND FACTS

I. Statutory Background

The Tennessee Constitution vests the State's judicial power in the Supreme Court as well as "Circuit, Chancery and other inferior Courts as the Legislature shall . . . ordain and establish." Tenn. Const. art. VI, § 1. With this authority, the General Assembly has established circuit and criminal courts with "exclusive original jurisdiction" over "crimes and misdemeanors." Tenn. Code Ann. § 16-10-102. This jurisdiction, though, is not without limits. "[O]nce [a] judgment becomes final in the trial court," the court has "no jurisdiction or authority to change [a criminal] sentence in any manner." Tenn. Code Ann. § 40-35-319(b).

Generally, "a trial court's judgment becomes final," and thus deprives that court of jurisdiction, "thirty days after its entry" unless post-trial motions or post-appeal proceedings restore jurisdiction. *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996) (citing Tenn. R. App. P. 4(a), (c)). After jurisdiction is lost, trial courts may modify a final judgment only when "authorized by statute or rule." *Nichols v. State*, No. E2018-00626-CCA-R3-PD, 2019 WL 5079357, at *12 (Tenn. Crim. App. Oct. 10, 2019) (quoting *State v. Moore*, 814 S.W.2d 381, 383 (Tenn. Crim. App. 1991)), *perm. app. denied* (Tenn. Jan. 15, 2020). In other words, "in the absence of an express statute or rule to the contrary, a [trial] court is without jurisdiction to reconsider and ultimately reimpose a modified term of imprisonment." *United States v. Ross*, 245 F.3d 577, 586 (6th Cir. 2001).

When a statute gives a trial court jurisdiction over an otherwise final judgment, "the measure of its authority is" always "the statute

itself." *Brown v. Brown*, 281 S.W.2d 492, 501 (Tenn. 1955); *see also Dillon v. United States*, 560 U.S. 817, 826 (2010). A trial court "exceed[s] its authority" when it acts beyond the statute or rule granting jurisdiction over an otherwise final judgment. *See State v. Tolle*, 591 S.W.3d 539, 541 (Tenn. 2019).

The confluence of these jurisdictional limits and evolving Eighth Amendment jurisprudence has spawned decades of litigation and legislative action. In 2001, this Court held that "the execution of [intellectually disabled] individuals" is "cruel and unusual punishment" in violation of the Tennessee and Federal Constitutions. *Van Tran v. State*, 66 S.W.3d 790, 809 (Tenn. 2001) (citing Tenn. Const. art. I, § 16; U.S. Const. amend. VIII). Less than a year later, the U.S. Supreme Court agreed, holding that the Eighth Amendment prohibits execution of the intellectually disabled. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

These decisions posed a problem for Tennessee law. A decade before, in 1990, the General Assembly passed a law providing that "no defendant with [intellectual disability] at the time of committing first degree murder shall be sentenced to death." Tenn. Code Ann. § 39-13-203(b) (1991). But that law applied only prospectively and did "not contain a procedure" by which intellectually disabled defendants sentenced to death before its enactment could challenge their eligibility for the death penalty. *See Van Tran*, 66 S.W.3d at 797-99. To remedy that problem, this Court invited defendants sentenced to death before the enactment of the intellectual disability statute to seek relief through a motion to reopen post-conviction proceedings based on the Court's

adoption of a new rule of constitutional law. *See id.* at 811-12; *see also* Tenn. Code Ann. § 40-30-117(a)(1).

Unfortunately, Payne failed to seek post-conviction relief within the one-year statutory window. *Payne v. State*, 493 S.W.3d 478, 488, 491 (Tenn. 2016); Tenn. Code Ann. § 40-13-117(a)(1). Because "the intellectual disability statute d[id] not create an independent collateral cause of action for raising a claim of intellectual disability and ineligibility to be executed," *id.* at 488, this Court was once again faced with a problem. Defendants, like Payne, had no avenue to prove that their death sentences were unconstitutional, and the risk of executing the intellectually disabled persisted. This time, to remedy the problem, the Court "encourage[d] the General Assembly to consider whether another appropriate procedure should be enacted to enable defendants condemned to death prior to the enactment of the intellectual disability statute to seek a determination of their eligibility to be executed." *Id.* at 492.

The General Assembly heeded that call. Citing this Court's 2016 *Payne* decision, lawmakers introduced a bill that would create "a procedural path for the very limited number of individuals with an intellectual disability who are already under the death sentence and who have not had their intellectual-disability claims fully adjudicated by the courts on the merits." *Hearing on S.B. 1349 Before the S. Floor Sess.*, 112th General Assembly (Tenn. Apr. 26, 2021) (1:31:50-1:37:45) (Sen. Gardenhire), https://bit.ly/4avZWQa. Sponsors emphasized that the bill would "not provide another bite of the apple because those few

individuals never got a first bite at the apple." *Id.* Rather, the purpose of the legislation was simply to "uphold [the legislature's] constitutional responsibilities, as well as Tennessee's commitment since 1990 to prohibit the execution of individuals with intellectual disability." *Id.*

This legislative process culminated in an amendment to the intellectual disability statute that ensures all capital defendants have at least one opportunity to seek an intellectual-disability determination. It read:

> (1) A defendant who has been sentenced to the death penalty prior to May 11, 2021, and whose conviction is final on direct review may petition the trial court for a determination of whether the defendant is intellectually disabled. The motion must set forth a colorable claim that the defendant is ineligible for the death penalty due to intellectual disability. Either party may appeal the trial court's decision in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure.
>
> (2) A defendant shall not file a motion under subdivision (g)(1) if the issue of whether the defendant has an intellectual disability has been previously adjudicated on the merits.

2021 Tenn. Pub. Acts, ch. 399, § 2 (codified at Tenn. Code Ann. § 39-13-203(g) (2018) (Supp. 2023)).[1]

As enacted, the amendment serves only the original and overarching command of the statute that "no defendant with intellectual

[1] Although not relevant here, a more recent amendment gave the Attorney General authority to represent the State in proceedings under § 203(g), and it expanded the statute's coverage to include defendants sentenced "prior to April 28, 2023"—the amendment's effective date—rather than "prior to May 11, 2021." 2023 Pub. Acts, c. 182, § 4, eff. April 28, 2023. *Id.*

disability at the time of committing first degree murder shall be sentenced to death." Tenn. Code Ann. § 39-13-203(b). It does that by creating a narrow procedural path for capital defendants, like Payne, to "set forth a colorable claim that" they are "ineligible for the death penalty due to intellectual disability." *Id.* § -203(g)(1). And it authorizes trial courts to make "a determination of whether the defendant is intellectually disabled." *Id.* Nothing in the amendment's text grants plenary resentencing authority.

II. Factual and Procedural Background

In 1987, Charisse Christopher, a 28-year-old single mother, lived with her 3-year-old son, Nicholas, and 2-year-old daughter, Lacie, in Hiwassee Apartments in Millington, Tennessee. *State v. Payne*, 791 S.W.2d 10, 11 (1990), *aff'd*, *Payne*, 501 U.S. 808. The apartment building had four units—two upstairs and two downstairs. *Id.* The Christophers lived upstairs. *Id.*

Payne's girlfriend, Bobbie Thomas, lived across the hall from the Christophers. *Id.* On the day of the murders, Payne visited Thomas's apartment several times; he was expecting her to return from an out-of-town trip. *Id.* Payne passed the time by "injecting cocaine and drinking beer." *Payne*, 501 U.S. at 812. He also took turns "reading a pornographic magazine" with a friend. *Id.* On multiple occasions, Payne returned to the vicinity of the victims' apartment building and began knocking on doors. *Payne*, 791 S.W.2d at 14-15. One neighbor gave him a drink of water, but another refused to let him enter. *Id.*

By mid-afternoon, Nancy Wilson, the resident manager, who lived directly below the victims' apartment, began hearing "blood curdling"

screams. *Id.* at 11. She heard Ms. Christopher yelling, "get out, get out," as if she was telling the children to escape. *Id.* Ms. Wilson went outside and started toward the Christophers' apartment, but she decided against it, returned to her apartment, and called 911. *Id.*

During the attack, Laura Picard was sunbathing in the backyard of the apartment across from Ms. Wilson. *Id.* at 13. She heard a sound "like a person moaning coming from the Christopher apartment." *Id.* When she looked up, she saw "a dark-colored hand with a gold watch" repeatedly "slamming" the back door where Ms. Christopher's body was found. *Id.* at 13. Ms. Picard also saw Ms. Wilson come outside and point up at the Christophers' apartment. *Id.*

When the screaming subsided, Ms. Wilson went to her bathroom, which was directly below the Christophers' bathroom. *Id.* at 11. She heard someone go into the Christophers' bathroom and turn on the faucet, as if to wash their hands. *Id.* at 11-12. She then heard someone walk across the floor, slam the door shut, and run down the stairs "just as the police arrived." *Id.* at 12.

Officer C.E. Owen was just two minutes away when he received the 911 call. *Id.* When he arrived at the scene, Officer Owen saw Payne race down the stairs of the apartment building and leave through the front door. *Id.* He was carrying an overnight bag and appeared to be "sweating blood." *Id.* Payne blurted out, "I'm the complainant," but he then struck Officer Owen with his bag and ran away. *Id.*

The scene inside the Christophers' apartment was horrifying. There was "blood on the walls, floor—everywhere." *Id.* The three victims

lay on the kitchen floor, near the back door. *Id.* Ms. Christopher and 2-year-old Lacie were dead. *Id.* A bloody butcher knife lay at the toddler's feet. *Id.* at 13. Three-year-old Nicholas was conscious but barely alive; he had watched the murder of his mother and baby sister. *Id.*

Payne stabbed Ms. Christopher 41 times, enough to have been fatal many times over. *Id.* at 12. Police found "[a] used tampon . . . on the floor near her knee," *id.* at 13, and "[i]t is safe to conclude that she did not remove the tampon" herself. *Id.* at 15. A specimen from Ms. Christopher's vagina testified positive for acid phosphatase—consistent with the presence of semen. *Id.*

Payne stabbed Lacie 9 times—she had wounds in her chest, abdomen, and the back of her head. *Id.* at 12. One of these stab wounds severed her aorta and would have been fatal by itself. *Id.* Payne repeatedly stabbed Nicholas, too. *Id.* Several of the stab wounds went completely through his small body. *Id.* He survived only after receiving emergency surgery to repair his spleen, liver, large intestine, small intestine, and vena cava. *Id.*

Shortly after the murders, police found Payne in a former girlfriend's townhouse down the street, hiding in the attic. *Id.* at 13. He had a "wild look about him"; "[h]is pupils were contracted," and "he was foaming at the mouth." *Id.* Although he had thrown some personal items in a dumpster, bloodstains still covered his body, pants, and gold watch. *Id.* When officers searched him, they found a syringe, an orange cap from a hypodermic syringe, and a "pony pack" with cocaine residue. *Id.* at 13. Payne also had 3 or 4 scratches across his chest. *Id.*

Back at the scene of the murders, evidence of Payne's presence was everywhere. Police found his fingerprints on Ms. Christopher's telephone, kitchen counter, and an open beer can left in her apartment. *Id.* His baseball cap was wrapped around Lacie's forearm. *Id.* Payne admitted that he had been in the Christophers' apartment but claimed that he was only trying to render aid. *Id.* at 13-14.

A jury convicted Payne on two counts of first-degree murder and sentenced him to death for each. *Id.* at 11. The trial court sentenced him to 30 years on one count of assault with intent to commit murder. *Id.* Despite the death sentences, the State moved for consecutive sentencing. (IX, Ex. H, T.R. at 153.) When Payne questioned the relevance of the State's motion (IX, Ex. H, Sent. Hr'g at 2), the State explained that consecutive sentencing would become relevant if another court ever held Payne's death sentences unconstitutional. (IX, Ex. H, Sent. Hr'g at 5.) The trial court agreed and ordered that all 3 sentences be served consecutively. (IX, Ex. H, Sent. Hr'g at 11.)

Payne appealed but did not challenge the consecutive-sentencing decision. *Payne*, 791 S.W.2d 10. This Court affirmed his convictions and sentences, holding that the trial proof "virtually foreclose[d] the possibility" that anyone other than Payne committed the heinous murders. *Id.* at 15. The U.S. Supreme Court agreed, noting that Payne's convictions rested on "overwhelming and relatively uncontroverted evidence." *Payne*, 501 U.S. at 827.

Undeterred, Payne has repeatedly pressed collateral attacks on his convictions and sentences in both state and federal courts.[2] But not once in more than 30 years did he raise any challenge to the trial court's consecutive-sentencing decision. Instead, Payne argued, among other things, that he was deprived of due process, that he received ineffective assistance of counsel, and that newly discovered evidence points to an alternate perpetrator. *See, e.g.*, *Payne*, 1998 WL 12670, at *1. Courts uniformly rejected those arguments.

Payne then turned to the intellectual disability statute. *Payne*, 493 S.W.3d at 487. As discussed, however, this Court held that the statute, as originally drafted, provided no relief to capital defendants, like Payne, who were sentenced to death before the act's effective date. *Id.* at 488-89. That soon changed.

After the General Assembly enacted Tenn. Code Ann. § 39-13-203(g), Payne petitioned the trial court for a determination of intellectual disability. (I, 1-122.) Records from earlier litigation showed that his

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[2] *See*, *e.g.*, *Payne v. State*, No. W2018-01048-CCA-R28-PD (Tenn. Crim. App. Jan. 4, 2019) (order); *Payne v. State*, No. W2016-02326-CCA-R28-PD (Tenn. Crim. App. Aug. 1, 2017) (order), *perm. app. denied* (Tenn. Nov. 21. 2017), *cert. denied*, 139 S. Ct. 66 (Oct. 1, 2018); *Payne v. State*, 493 S.W.3d 478, 480 (Tenn. 2016), *cert. denied*, 137 S. Ct. 1327 (Mar. 20, 2017); *Payne v. State*, No. W2013-01215-CCA-R28-PD (Tenn. Crim. App. July 29, 2013) (order), *perm. app. denied* (Tenn. Nov. 14, 2013); *Payne v. State*, No. W2007-01096-CCA-R3-PD, 2007 WL 4258178 (Tenn. Crim. App. Dec. 5, 2007), *perm. app. denied* (Tenn. Apr. 14, 2008); *Payne v. Bell*, 418 F.3d 644 (6th Cir. 2005), *cert. denied*, 548 U.S. 908 (June 26, 2006), *reh'g denied*, 548 U.S. 939 (Sept. 1, 2006); *Payne v. State*, No. 02C01-9703-CR-00131, 1998 WL 12670 (Tenn. Crim. App. Jan. 15, 1998), *perm. app. denied* (Tenn. June 8, 1998).

intellect was near the threshold for disability. *Payne*, 493 S.W.3d at 481-82 (noting that an I.Q. score of 70 was the threshold for disability and discussing Payne's scores of 69, 78, and 74). But the Shelby County District Attorney conceded that Payne is intellectually disabled and thus no longer eligible for the death penalty. (III, 329-30.) The parties also agreed that Payne must receive two life sentences—the only permissible alternative sentence for his murder convictions. (III, 332, 340.)

Shelby County Criminal Court Judge Paula Skahan accepted the State's concession on the question of intellectual disability. (III, 332.) But instead of simply accepting that concession and making an intellectual-disability determination, the trial court "vacated" the death sentences and held a new sentencing hearing. (III, 332; VII, 10-204; VIII, 215-85.) Drawing on principles of "fundamental fairness," the court revisited the consecutive alignment of Payne's murder sentences. (III, 415, 425.) In the court's view, the inadequacy of the original trial judge's findings for its consecutive-sentencing determination was enough, "standing alone," to grant Payne a new sentencing hearing. (III, 423, 425.) The court's "fairness concerns" also stemmed from its view that Payne's original trial and appellate counsel should have challenged these limited findings. (III, 415, 422, 425.)

But after the hearing, the trial court determined that the nature and circumstances of the offenses did in fact support the original sentencing judge's conclusion that Payne was a dangerous offender who should receive consecutive sentences. (IV, 472.) Still, the court chose to realign Payne's murder sentences to be served concurrently. (IV, 445, 473-74.) Although Payne may have been a dangerous offender when he

was first sentenced, the court said, his prison record showed that he was no longer dangerous. (IV, 468-73.) The court did not revisit the consecutive alignment of the unaffected assault sentence (IV, 465 n.14, 474), but it entered amended judgments reflecting concurrent life sentences for Payne's murder convictions. (IV, 475-76; XII, 2-3.) As a result, Payne will be parole eligible in just two years. *See* Tenn. Code Ann. § 40-35-501(c), (f) (1982) (Supp. 1988).

The Court of Criminal appeals affirmed. *State v. Payne*, No. W2022-00210-CCA-R3-CD, 2023 WL 5599723, at *1 (Tenn. Crim. App. Aug. 30, 2023), *perm. app. granted* (Tenn. Feb. 12, 2024). It held that the trial court had discretion under § 203(g) to realign Payne's murder sentences, even though his intellectual disability only affected his eligibility for the death penalty. *Id.* at *11. In the court's view, the text and history of § 203(g) were "silent" on the issue of resentencing. *Id.* at *6-7. And the rule of lenity, the court reasoned, "requires that [it] resolve the ambiguity regarding the trial court's sentencing authority . . . in the Defendant's favor." *Id.* at *10 (citing *State v. Deberry*, 651 S.W.3d 918, 925 (Tenn. 2022)). The court also invoked the trial court's "inherent power" to adopt appropriate rules of procedure to address issues for which no procedure is otherwise prescribed. *Id.* (quoting *State v. Reid*, 981 S.W.2d 166, 170 (Tenn. 1998)).

This Court granted the State's application for permission to appeal. Order, *State v. Payne*, No. W2022-00210-SC-R11-CD (Tenn. Feb. 12, 2024).

STANDARD OF REVIEW

Whether subject matter jurisdiction exists is a question of law, which this Court reviews de novo. *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017). The Court applies the same standard of review to questions of statutory interpretation. *Keen v. State*, 398 S.W.3d 594, 599 (Tenn. 2012).

ARGUMENT

"Finality is essential to both the retributive and the deterrent functions of criminal law." *Calderon v. Thompson*, 523 U.S. 538, 555 (1998). Only with "real finality" can "the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id.* (citing *Payne*, 501 U.S. 808). "To 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).

The Court protects this important interest by requiring the General Assembly to speak clearly when giving trial courts jurisdiction to revisit final decisions. Trial courts may only modify a final judgment when—and to the extent—authorized by statute or rule. This Court also promotes finality by employing well-settled rules of statutory interpretation. Those rules ensure that statutes permitting interference with finality are not interpreted expansively.

The courts below sidestepped these longstanding principles, and in doing so, upset the finality of 33-year-old judgments. The trial court exceeded its jurisdiction by taking the General Assembly's narrow grant of authority as an invitation to revisit the long-final decision that Payne's

murder sentences should run consecutively. And the Court of Criminal Appeals affirmed, treating silence as permission. Because the plain text of the intellectual disability statute, as understood by its purpose and context, permits nothing more than an intellectual-disability determination, this Court should reverse.

I. Tenn. Code Ann. § 39-13-203(g) Does Not Authorize Sentence Realignment.

Neither the intellectual disability statute nor any other statute authorized the trial court to realign Payne's sentences after finding him intellectually disabled. The plain text of Tenn. Code Ann. § 39-13-203(g), read in context and in light of the statute's limited purpose, only authorized the trial court to make a determination of intellectual disability and death-sentence ineligibility. And foundational interpretive principles prohibit an expansive application of the statute to permit plenary resentencing. This Court should make clear that lower courts must stay within § 203(g)'s narrow bounds.

A. The statute's plain text only authorizes trial courts to make an intellectual-disability determination.

"The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose." *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 839 (Tenn. 2019). The question here is whether § 203(g) authorized the trial court to revisit the alignment of Payne's sentences. The answer is plainly no.

Tennessee Code Annotated § 39-13-203(g), on its face, permits trial courts to determine whether a defendant is intellectually disabled and

therefore ineligible for the death penalty—nothing more. The 2021 amendment says that "[a] defendant who has been sentenced to the death penalty prior to May 11, 2021, and whose conviction is final on direct review may petition the trial court for a determination of whether the defendant is intellectually disabled." Tenn. Code Ann. § 39-13-203(g)(1). And the statute further explains that a defendant's motion "must set forth a colorable claim that the defendant is ineligible for the death penalty due to intellectual disability." *Id.* Once the trial court reaches its decision, "[e]ither party may appeal th[at] . . . decision in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure." *Id.*

That text is dispositive: Section 203(g) only authorizes the trial court to make a "determination of whether the defendant is intellectually disabled." *Id.* That determination provides a "legal reason" preventing "the execution of the [death] sentence," Tenn. Code Ann. § 40-23-119; *cf.* Tenn. Sup. Ct. R. 12.4, curing the constitutional problem the General Assembly sought to address. This section does not authorize resentencing, and it certainly does not authorize sentence realignment, which has nothing to do with a "claim that the defendant is ineligible for the death penalty." *Id.*

It is a basic principle of statutory interpretation—a principle "so obvious that it seems absurd to recite it"—that, where a statute omits a provision, that "absent provision cannot be supplied by the courts." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 93-94 (2012). Instead, "a matter not covered is to be treated as not covered." *Id.* at 93. The U.S. Supreme Court has thus routinely

refused to "add an extra clause" to the text of a statute because doing so "is not a construction of a statute, but, in effect, an enlargement of it by the court." *Nichols v. United States*, 578 U.S. 104, 110 (2016) (citation omitted). And this Court has recognized time and again that courts should not "expand[] a statute's coverage," *Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023), or "broaden[]" its scope, *Ellithorpe v. Weismark*, 479 S.W.3d 818, 827 (Tenn. 2015); *see also, e.g.*, *State v. Robinson*, 676 S.W.3d 580, 588 (Tenn. 2023) (declining to read in language that the legislature chose to omit, observing that courts "must assume that this was not an oversight"). Rather, they "must be circumspect about adding words to a statute that the General Assembly did not place there." *Coleman v. State*, 341 S.W.3d 221, 241 (Tenn. 2011) (citations omitted).

Reading § 203(g) to authorize sentence realignment would impermissibly "add[] words" to the statute. *Id.* If the General Assembly wished to give trial courts authority to realign defendants' sentences in this context, it could have simply added the bolded language below:

> A defendant who has been sentenced to the death penalty prior to May 11, 2021 and whose conviction is final on direct review may petition the trial court for a determination of whether the defendant is intellectually disabled. The motion must set forth a colorable claim that the defendant is ineligible for the death penalty due to intellectual disability. **If the trial court determines that the defendant is intellectually disabled, it shall vacate the original sentence and resentence the defendant in accordance with applicable law.** Either party may appeal the trial court's decision in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure.

But it did nothing of the sort.

At bottom, the statutory text should be the beginning and end of the matter. "When the meaning of a statute is clear, '[courts] apply the plain meaning without complicating the task' and enforce the statute as written." *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013) (quoting *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011)). And here, the statute the General Assembly enacted establishes a procedural mechanism for capital defendants to obtain an intellectual-disability determination to prevent an unconstitutional execution. This Court should "assum[e] . . . that the legislature intended what it wrote and meant what it said," *Worley v. Weigels, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996), and should "decline to 'read in' language . . . that the General Assembly did not place there," *Coleman*, 341 S.W.3d at 240. Because nothing in the statute's text authorizes sentence realignment, this Court should treat that silence as dispositive.

B. The statute's purpose and context confirm its narrow scope.

The statute's purpose and context confirm what the text makes clear: that trial courts lack jurisdiction to alter the original sentence alignment after making an intellectual-disability determination. *See Deberry*, 651 S.W.3d 918 (considering the "statutory context" and "broader statutory framework" when interpreting the criminal-savings statute); *id.* at 925 (considering "the statute's general purpose").

1. This Court discerns a statute's purpose by considering "the words that the General Assembly has chosen," because "legislative purpose is reflected in a statute's language." *Lee Med., Inc., v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). The Court also considers "the subject

matter" and "the wrong or evil which it seeks to remedy or prevent." *State v. Robinson*, 676 S.W.3d 580, 584 (Tenn. 2023); *see also In re Markus E.*, 671 S.W.3d 437, 476 (Tenn. 2023) (Campbell, J., concurring in part and concurring in the judgment).

Here, the language of the statute focuses on whether "the defendant is ineligible for the death penalty due to intellectual disability." Tenn. Code Ann. § 39-13-203(g)(1). This focus is consistent with the law's subject matter, expressed by the title of § 203: "Intellectually disabled defendants; capital punishment."[3] *Id.* Indeed, this Court has long recognized that the purpose of § 203 is to further the State's public policy "oppos[ing] the execution of persons with intellectual disabilities." *Coleman*, 341 S.W.3d at 240.

Section 203(g)'s retroactivity provision likewise shows that its purpose is to prevent a specific constitutional wrong—the execution of intellectually disabled defendants sentenced to death before July 1, 1990. As discussed, in 2001, this Court (and shortly thereafter the U.S. Supreme Court) held that the execution of intellectually disabled defendants is unconstitutional. *Van Tran*, 66 S.W.2d at 809; *Atkins*, 536 U.S. at 321. But defendants sentenced before those decisions and before Tennessee limited eligibility for the death penalty had no avenue to prove that their death sentences were unconstitutional. To address *that*

[3] "Although [Tenn. Code Ann. § 1-3-109] directs that headings to statutes are not part of the statutes themselves, it is permissible under widely held rules of statutory construction to consider a heading for legislative intent and purpose." *In re Estate of Davis*, 308 S.W.3d 832, 839 (Tenn. 2010).

problem, the legislature heeded this Court's call to create an "appropriate procedure . . . to enable defendants condemned to death prior to the enactment of the intellectual disability statute to seek a determination of their eligibility to be executed." *Payne*, 493 S.W.3d at 492. The 2021 amendment allows "[a] defendant who has been sentenced to the death penalty prior to May 11, 2021, and whose conviction is final on direct review," to seek an intellectual-disability determination. Tenn. Code Ann. § 39-13-203(g)(1). Plainly, the purpose of this provision was to allow an intellectual-disability determination to prevent *an unconstitutional execution*.

At the end of the day, "the limitations of a text—what a text chooses not to do—are as much a part of its 'purpose' as its affirmative dispositions." Scalia & Garner, *supra*, at 57. And so, when interpreting Tenn. Code Ann. § 39-13-203, the Court has consistently "decline[d] to 'read in' language . . . that the General Assembly did not place there." *Coleman*, 341 S.W.3d at 240. Because sentence alignment has nothing to do with the text, subject matter, or the specific constitutional wrong that the intellectual disability statute seeks to prevent, it falls outside the scope of the statute.

2. Nothing in the broader statutory scheme compels a different conclusion. Neither § 203(g) nor any other statute authorizes plenary resentencing after a trial court's intellectual-disability determination. Instead, the intellectual disability statute only contemplates a sentence reduction from death to either life imprisonment or life without parole. *See* Tenn. Code Ann. § 39-13-203(d); *see also id.* § -206(e). And no statute

contemplates resentencing for defendants, like Payne, who are ineligible for life without parole because they were sentenced to death before July 1, 1993. *See State v. Cauthern*, 967 S.W.2d 726, 735 (Tenn. 1998). That makes sense. There is no need for resentencing because the only alternative sentence is life. *See* Tenn. Code Ann. § 39-13-208(c). Even Payne agrees on that point. (III, 332, 340.)

The appellate right allowed by § 203(g) further confirms that the trial court's role is limited to making an intellectual-disability determination—not revisiting distinct and severable components of an otherwise final judgment. Specifically, the statute allows either party to "appeal the trial court's *decision* in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure." Tenn. Code Ann. § 39-13-203(g)(1) (emphasis added). Of course, § 203(g) only references one "decision" from the trial court—the "determination of whether the defendant is intellectually disabled." *Id.* Because the statute only grants parties a right to appeal that discrete issue, it plainly does not contemplate or authorize broader sentencing relief.

As these provisions make clear, the broader statutory context does not authorize plenary resentencing. The trial court simply makes an intellectual-disability determination to decide whether a capital defendant is ineligible for the death penalty. And for defendants, like Payne, who are ineligible for life without parole, that ends the endeavor.

C. Interpretive principles prohibit an expansive application of the statute.

The finality of Payne's judgments and the well-established presumption against retroactivity both cut sharply against the trial court's expansive and unprecedented application of the intellectual disability statute. When retroactive statutes upend finality, they risk profound injury to the State's and victims' legitimate interest in punishing the guilty. For that reason, Tennessee courts strictly construe such statutes to preserve finality, and they presume retroactive application only to the extent clearly manifested in the statute's text.

1. Tennessee courts strictly construe statutes and rules that upend finality.

Society has a "legitimate interest in preserving the finality of judgments" in criminal cases. *Wright v. State*, 987 S.W.2d 26, 29 (Tenn. 1999); *see also Schlup v. Delo*, 513 U.S. 298, 322 (1995) (recognizing "systemic interests in finality"). "[P]reventing narrow avenues for collateral review from ballooning into substitutes for ordinary error correction through appeal" serves that "important interest[] in finality." *George v. McDonough*, 142 S. Ct. 1953, 1962 (2022) (cleaned up). And Tennessee courts protect this interest by strictly construing statutes and rules that upend finality.

For example, "[a]lthough th[e] statutory language for seeking state habeas corpus relief is broad, this Court has long recognized 'the limited nature of the relief available.'" *Cantrell v. Easterling*, 346 S.W.3d 445, 453 (Tenn. 2011) (quoting *Archer v. State*, 851 S.W.2d 157, 161 (Tenn. 1993)). Habeas "relief will differ . . . depending upon which aspect of the

judgment is invalid." *Id.* at 455-56 (distinguishing the conviction and sentence components of a judgment). Moreover, courts generally confine relief to the illegal "component[s] of the sentence." *May v. Carlton*, 245 S.W.3d 340, 345 (Tenn. 2008) (vacating only the portion of the judgment labeling the petitioner infamous). The Court of Criminal Appeals has also strictly construed the term "vacate" in the Post-Conviction Procedure Act to only authorize trial courts to "remedy the constitutional wrong found to have occurred." *Sills v. State*, 884 S.W.2d 139, 142 (Tenn. Crim. App. 1994) (holding "that the trial court acted properly under the Post-Conviction Procedure Act by, in effect, vacating only a part of the original sentence").

This Court adopts the same strict, finality-favoring interpretive approach when it comes to construing rules. For example, the Court held that Tenn. R. Crim. P. 36.1 does not permit relief on expired illegal sentences because the rule is silent about sentence expiration. *State v. Brown*, 479 S.W.3d 200, 202 (Tenn. 2015). It held that a trial court "exceeded [its] authority" under Tenn. R. Crim. P. 36, by "partially vacat[ing]" a final order instead of "simply . . . correct[ing] a clerical mistake." *State v. Allen*, 593 S.W.3d 145, 154 (Tenn. 2020). And it held that a trial court "exceeded its authority" under Tenn. R. Crim. P. 35 in reducing a defendant's sentence beyond what was allowed by that rule's "plain language." *Tolle*, 591 S.W.3d at 545.

The upshot: This Court strictly construes statutes that upend finality, so when a statute authorizes a trial court to exercise jurisdiction over an otherwise final judgment, "the measure of its authority is the

statute itself." *Brown*, 281 S.W.2d at 501; *see also Dillon*, 560 U.S. at 826.

2. The presumption against retroactivity also supports a narrow interpretation.

The presumption against retroactivity further supports the State's reading of § 203(g). That "deeply rooted," "time-honored presumption" requires legislative bodies to "clearly manifest[]" their intent to allow retroactive application of statutes, *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 946 (1997)—including statutes that "speak . . . to the power of a particular court" and "create jurisdiction where none otherwise exists." *Republic of Austria v. Altmann*, 541 U.S. 677, 695 (2004). And "where a statute is silent as to the scope of its application, the statute should not be applied retroactively." *Patel v. Gonzales*, 432 F.3d 685, 690 (6th Cir. 2005).

Here, the General Assembly indisputably intended for there to be *some* retroactive application of the intellectual disability statute. It included "clear language expressing its intent" that the statute apply retroactively to enable capital defendants to seek a determination of whether they are intellectually disabled. Tenn. Code Ann. § 39-13-203(g)(1) ("A defendant who has been sentenced to the death penalty prior to May 11, 2021 and whose conviction is final on direct review may petition the trial court for a determination of whether the defendant is intellectually disabled."). But it did not even hint—let alone provide a "clear indication"—that it intended to open the door to anything beyond a determination of intellectual disability. *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37-38 (2006).

The General Assembly's choice to open the door just a crack for retroactive intellectual-disability determinations does not clearly authorize courts to fling the door open to the entire universe of possible sentence modifications. If the General Assembly wanted the law to have broad retroactive application, it needed to say so in clear language because "retroactivity is . . . judged with regard to the act or event that the statute is meant to regulate." Scalia & Garner, *supra*, at 264.

D. Legislative history confirms the statute's narrow purpose and scope.

The legislative history reinforces the State's interpretation. "When a statute's meaning is clear and unambiguous after consideration of the statutory text, the broader statutory framework, and any relevant canons of statutory construction, [this Court] enforce[s] the statute as written." *Deberry*, 651 S.W.3d at 925 (cleaned up). It need not "delve into the legislative history" at all. *Id.* at 930.

But the Court may consider legislative history "to confirm its interpretation of the language of a statute" or "to confirm that the legislative history d[oes] not conflict with its interpretation of [the statute]." *Black v. State*, No. M2022-00423-CCA-R3-PD, 2023 WL 3843397, at *8 (Tenn. Crim. App. June 6, 2023) ("Although we reject the need to resort to legislative debates to inform the meaning of [the intellectual disability statute] . . . we agree with the State that the legislative history confirms our interpretation of subsection (g)(2).") (no perm. app. filed); *see also In re Rader Bonding Co., Inc.*, 592 S.W.3d 852, 862 n.14 (Tenn. 2019); *State v. Marshall*, 319 S.W.3d 558, 562 (Tenn. 2010).

If this Court chooses to consider extratextual sources, the statute's legislative history further confirms its narrow purpose and scope. The sponsors of the legislation—Senator Todd Gardenhire and Representative David Hawk—repeatedly emphasized the twin aims of the bill: (1) updating the definition of intellectual disability and (2) providing a procedural mechanism for capital defendants to seek an intellectual-disability determination if they never had such a claim adjudicated on the merits.[4] There was no suggestion that the legislation would grant trial courts plenary resentencing authority after a determination of intellectual disability.

In fact, the fiscal note that accompanied the bill makes clear that the General Assembly did not contemplate an intellectual-disability determination affecting the alignment of multiple life sentences; it merely states that if a court "determines that a defendant sentenced to death prior to [the] effective date of th[e] legislation is intellectually disabled," the expected result was "imprisoning the defendant for life." *Fiscal Note HB 1062 – SB 1349*, 112th General Assembly (Tenn. Feb. 23,

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[4] *Hearing on S.B. 1349 Before the S. Floor Sess.*, 112th General Assembly (Tenn. Apr. 26, 2021) (1:31:50-1:37:45) (Sen. Gardenhire), https://bit.ly/4avZWQa; *Hearing on H.B. 1062 Before the H. Floor Sess.*, 112th General Assembly (Tenn. Apr. 26, 2021) (01:00:30-01:04:10) (Rep. Hawk), https://bit.ly/4cBekZn; *Hearing on H.B. 1062 Before the H. Crim. Just. Comm.*, 112th General Assembly (Tenn. Apr. 14, 2021) (36:50-47:25) (Rep. Hawk), https://bit.ly/3J0paus; *Hearing on S.B. 1349 Before the S. J. Comm.*, 112th General Assembly (Tenn. Apr. 13, 2021) (03:12:22-03:17:46) (Sen. Gardenhire), https://bit.ly/3PHT8ah; *Hearing on H.B. 1062 Before the H. Crim. Just. Subcomm.*, 112th General Assembly (Tenn. Apr. 7, 2021) (30:26-47:33) (Rep. Hawk), https://bit.ly/43HUurk.

2021); *see also Aluminum Co. of Am.* v. *Celauro*, 762 S.W.2d 107, 109 (Tenn. 1988) (considering fiscal note as legislative history).

The takeaway is obvious: the General Assembly only sought to enable courts to make an intellectual-disability determination to prevent an unconstitutional execution. It did not authorize—or even contemplate—sentence realignment.

II. The Court of Criminal Appeals Erred by Affirming the Unauthorized Sentence Realignment.

The Court of Criminal Appeals made three fundamental errors in affirming the judgments below. First, it wrongly took legislative silence as resentencing authority. Second, it erroneously concluded that the trial court had "inherent power" to enter amended judgments modifying the original sentence alignment. Third, it improperly extended the rule of lenity to a non-penal statute. These compounding flaws led to a judicial arrogation of jurisdiction that the General Assembly never granted.

A. The court erred by treating silence as authority.

The Court of Criminal Appeals drew the wrong conclusion from statutory silence. The court started off on the right foot, correctly recognizing that § 203(g) is "silent" on the trial court's sentencing authority after an intellectual-disability determination. But the court quickly took a wrong turn. Instead of accepting the General Assembly's silence for what it was—a choice not to say more—and recognizing that jurisdiction goes only as far as affirmatively authorized, the court expanded § 203(g)'s reach. The General Assembly's silence, in the court's view, prevented "appl[ication] [of] the plain language of th[e] statute alone" and justified looking to extratextual sources for guidance. *Payne*,

2023 WL 5599723, at *6. The court ultimately concluded that it could "not presume from silence that the legislature intended to divest a trial court of jurisdiction it would otherwise have." *Id.* at *8 (citing *Fletcher v. State*, 951 S.W.2d 378, 382 (Tenn. 1997)). That conclusion is fatally flawed.

First, the court's ultimate silence-based conclusion gets things backwards. To be sure, it would be a stretch to presume from silence that the General Assembly "divest[ed]" a court of jurisdiction. But here, the trial court had no resentencing authority—i.e., no jurisdiction—to divest. The trial court lost its jurisdiction when Payne's judgments became final more than 30 years ago. *Pendergrass*, 937 S.W.2d at 837. And once it lost jurisdiction, the court could only modify the judgments when, and to the extent, "authorized by statute or rule." *Nichols*, 2019 WL 5079357, at *12. True, § 203(g) gave the trial court jurisdiction to determine "whether the defendant is intellectually disabled" and, therefore, "ineligible for the death penalty." Tenn. Code Ann. § 39-13-203(g)(1). The trial court did so, and its intellectual-disability determination prevents Payne's execution. Tenn. Code Ann. § 40-23-119; *cf.* Tenn. Sup. Ct. R. 12.4. But the statute's plain text does not authorize resentencing—let alone sentence realignment. At most, the trial court should have simply cured the unconstitutional component of Payne's death sentences by reducing the death sentences to life imprisonment by operation of law. *Supra* at pp. 32-33; Tenn. Code Ann. § 39-13-208(c). The court thus "exceeded its authority" under § 203(g) by granting sentencing relief not contemplated by the statute's plain text. *See Tolle*, 591 S.W.3d 541.

To support its contrary conclusion, the Court of Criminal Appeals pointed to this Court's decision in *Fletcher*. *Payne*, 2023 WL 5599723, at *8. There, as the Court of Criminal Appeals rightly observed, this Court held that statutory silence did not divest it of jurisdiction to consider a post-conviction petitioner's appeal from the denial of his motion to reopen post-conviction proceedings. *See id.* (citing *Fletcher*, 951 S.W.2d 378). In reaching that holding, this Court rejected the State's argument that the Court lacked jurisdiction because the Post-Conviction Procedure Act did not expressly authorize such an appeal. *Id.* at 381. The Court declined to "conclude, based on mere silence, that the General Assembly intended to divest this Court, a constitutional court of last resort, of jurisdiction." *Id.*

Fletcher's narrow holding does not help Payne; it only underscores the Court of Criminal Appeals' error. The core premise of this Court's holding in *Fletcher*—that this Court already had jurisdiction over the appeal—is absent here. This Court has appellate jurisdiction by default. *See* Tenn. Const. art. VI, § 2 ("The jurisdiction of this Court shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law."); Tenn. Code Ann. § 16-3-201(a) (same). It necessarily follows that the General Assembly cannot, by silence, take that jurisdiction away. Here, of course, the situation is reversed. The trial court had *no* jurisdiction; the court's authority over the case ended when Payne's judgments became final. So there was no jurisdiction to "divest," by silence or otherwise. *Payne*, 2023 WL 5599723, at *8.

Fletcher thus offers no support for the trial court's expansive reading of § 203(g)'s statutory silence.

Second, the Court of Criminal Appeals found the wrong answers in the silence of the broader statutory scheme. After a trial court makes an intellectual-disability determination, the court noted, § 203(d) requires a sentencing hearing at which the jury will decide between a sentence of life imprisonment or life without parole. Tenn. Code Ann. § 39-13-203(d); *see also id.* § -206(e). But the court acknowledged that these provisions "do[] not specifically address the sentencing procedures for a defendant who is not eligible for a sentence of life without parole." *Payne*, 2023 WL 5599723, at *10. The General Assembly provided no statutory provision for resentencing a capital defendant, like Payne, who is not eligible for life without parole. And there is no need: If ineligible for the death penalty, the only available sentence for these defendants is "imprisonment for life"—a fact the Court of Criminal Appeals acknowledged. *Id.* (quoting Tenn. Code Ann. § 39-13-208(c)).

Still, the Court of Criminal Appeals rejected the State's argument that "the silence of these statutes [regarding sentencing] indicates a trial court's lack of jurisdiction to consider the issue." *Id.* at *8. The court also lamented that the broader statutory scheme did not specify whether the trial court should "enter an amended judgment" or "vacate the death sentence and sentence the defendant anew." *Id.* But as shown above, the court simply should have determined, based on the statutory text alone, that § 203(g) does not authorize *any* form of resentencing—let

alone sentence realignment, which has nothing to do with a defendant's eligibility for the death penalty.

Even taking that argument on its own terms, the Court of Criminal Appeals exaggerated the distinction between vacating and amending a final judgment. When finality interests are at stake, courts have recognized that vacating a judgment does not always require full resentencing. For example, the Post-Conviction Procedure Act provides that "the court shall vacate and set aside the judgment" after finding that a constitutional violation rendered the judgment void or voidable. Tenn. Code Ann.§ 40-30-111(a). But the Court of Criminal Appeals has held that "the vacation of the judgment for post-conviction relief . . . does not mean that the original case is automatically voided from its inception." *Sills*, 884 S.W.2d at 142. Instead, it means "the original case may be returned to the particular stage needed to remedy the constitutional wrong found to have occurred." *Id.* If "the prejudice flowing from the violation of the petitioner's constitutional rights did not spread to [other portions of his sentence]," the court "is authorized to reaffirm or to refuse to vacate those portions of the original sentence." *Id.* at 144.

Third, the Court of Criminal Appeals drew the wrong conclusions from silence in the legislative history. Despite recognizing that there was "[n]o legislative discussion" about "the statute's effect on a defendant with multiple first degree murder convictions," the court summarily rejected the State's argument that legislative silence confirmed the statute's narrow purpose of preventing unconstitutional executions. *Payne*, 2023 WL 5599723, at *6-7.

The Court of Criminal Appeals should not have considered legislative history at all; the unambiguous statutory text does not authorize resentencing or modification of non-death-penalty portions of otherwise final sentences. *See supra* at pp. 27-37; *see also Deberry*, 651 S.W.3d at 930 (requiring courts to "employ[] all of the traditional tools of statutory construction" before resorting to legislative history). But in any event, the legislative history only helps the State's argument. Lawmakers focused exclusively on updating the definition of intellectual disability and providing defendants, like Payne, a procedural avenue to seek a determination of intellectual disability. Neither objective implicates sentence alignment. And nothing about the legislative history "conflict[s] with [the State's] interpretation of [the statute]." *Black*, 2023 WL 3843397, at *8 (citing *Marshall*, 319 S.W.3d at 562).

Fourth, the Court of Criminal Appeals misunderstood the very nature of legislative silence. The court took the "silence" in § 203(g) as justification to look beyond the text. "[W]hen the statutory language is silent as to the issue at hand," it said, "the objective and spirt behind the legislation may be determinative." *Payne*, 2023 WL 5599723, at *5. As support for that proposition, the court cited this Court's decisions in *State v. McNack*, 356 S.W.3d 906 (Tenn. 2011) and *Lipscomb v. Doe*, 32 S.W.3d 840 (Tenn. 2000). *See Payne*, 2023 WL 5599723, at *5. But the court read too much into those decisions.

This Court in *McNack* did observe that where the legislature is silent, other extratextual sources may be "determinative." 356 S.W.3d at 912; *see also Lipscomb*, 32 S.W.3d at 854 (similar). But the "silence" in

those cases resulted from the General Assembly's use of undefined terms. *See McNack*, 356 S.W.3d at 912 (looking to extratextual sources to define "actual time served"); *see also Lipscomb*, 32 S.W.3d at 854 (doing the same for the phrase "unknown motorist"). In neither of those cases did this Court confront a statute that contained a facially unambiguous command and then find ambiguity because the General Assembly did not say something else that it could have said.

Our centuries-old approach to statutory interpretation requires courts to focus on what legislative bodies *did say*, not on what they *could have said*. *See Worley*, 919 S.W.2d at 593; *see also Coleman*, 341 S.W.3d at 240. Put differently, statutory interpretation is a sort of conversation between the legislature and the courts—one where the legislature enacts statutory text, and the courts receive and interpret it. But that falls apart if everything a statute does not say is "silence" or "ambiguity." Imagine that a legislature passes a law that says "X." That statute is not "silent" or "ambiguous" because it does not also say "Y." Instead, that silence is presumed to be the legislature's *choice*; not an invitation for courts to legislate themselves. *See* Scalia & Garner, *supra*, at 93-94.

At every turn, then, the Court of Criminal Appeals erroneously interpreted legislative silence as authority to not only resentence Payne, but to modify the original sentence alignment—a distinct and severable component of his otherwise final sentences. This error infected the court's entire analysis and requires reversal.

B. The court erred by ruling that the trial court had inherent power to realign the murder sentences.

The Court of Criminal Appeals also erred by holding that the trial court had "inherent power" to modify the original sentence alignment. *Payne*, 2023 WL 5599723, at *10 (quoting *Reid*, 981 S.W.2d at 170). Trial courts do not have "inherent power" to extend the scope of their own jurisdiction by granting unauthorized sentencing relief.

The Court of Criminal Appeals improperly relied on *Reid* to support its sweeping conception of trial courts' "inherent power." *Id.* In *Reid*, this Court addressed whether the trial court had "authority to require a capital defendant either to provide pretrial notice of intent to offer mental condition evidence or to submit to an evaluation by a State selected mental health expert." 981 S.W.2d at 169. The Tennessee Rules of Criminal Procedure did not specifically address that issue. *See id.* Ultimately, this Court held that trial courts have "inherent power" to adopt appropriate procedural rules to address issues "for which no procedure is otherwise specifically prescribed," but only when such rules are "consistent with constitutional principles, statutory laws, and generally applicable rules of procedure." *Id.* at 170; *see also* Tenn. Code Ann. § 16-3-407.

In *Reid*, the trial court's rules passed that test. *Id.* Unlike in Payne's case, the trial court in *Reid* unquestionably had jurisdiction to hold a capital sentencing hearing as part of the murder prosecution. *See* Tenn. Code Ann. § 39-13-204. It makes sense, then, that the court could adopt procedural rules that were "reasonabl[y]" related to the exercise of that jurisdiction. *Reid*, 981 S.W.2d at 170. But trial courts do not have

"inherent power" to *expand* the scope of their jurisdiction in a collateral-review proceeding. That would violate constitutional separation-of-powers principles and statutory limits on the exercise of judicial power over final judgments. *See, e.g.*, Tenn. Code Ann. § 40-35-319(b).

Here, the trial court only had jurisdiction to decide "whether the defendant is intellectually disabled" and therefore "ineligible for the death penalty." Tenn. Code Ann. § 39-13-203(g)(1). Although the trial court might have had authority to adopt "appropriate procedural rules" attendant to that specific and limited inquiry, the court's "inherent power" certainly did not extend to modifying the original sentence alignment, which has nothing to do with the intellectual-disability determination authorized by § 203(g). The Court of Criminal Appeals erred by upholding the trial court's unlawful resentencing decision on this basis.

C. The court erred by invoking the rule of lenity.

The Court of Criminal Appeals invoked the rule of lenity as a "tie breaker" to resolve a perceived ambiguity. *Payne*, 2023 WL 5599723, at *5, 10. But § 203(g) is not "grievously ambiguous or uncertain," *Deberry*, 651 S.W.3d at 925 (cleaned up), so there was no "tie" to break. If the Court reaches the issue, though, it should clarify that the rule of lenity does not apply to non-penal statutes like the intellectual disability statute.

The rule of lenity—the idea that "penal statutes must be construed strictly"—is one of the oldest canons of statutory interpretation. Scalia & Garner, *supra*, at 296 (quoting 1 William Blackstone, *Commentaries* *88 (Blackstone)); *see also* *State v. Richmond*, 100 S.W.2d 1, 2 (Tenn.

1937) ("[I]t is a fundamental rule in the construction of statutes that penal statutes must be construed strictly."). In the American legal tradition, the rule serves three purposes. First, it protects individual liberty, reflecting "the tenderness of the law for the rights of individuals." *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.). Second, it operates as a mechanism to enforce the separation of powers by ensuring that "[i]t is the legislature, not the Court, which is to define a crime, and ordain its punishment." *Id.* Third, it furthers "fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his [or her] conduct is prohibited." *State v. Marshall*, 319 S.W.3d 558, 563 (Tenn. 2010) (quoting *Dunn v. United States*, 442 U.S. 100, 112 (1979)).

Contrary to this understanding, the Court of Criminal Appeals wrongly invoked the rule of lenity as "a catch-all maxim that resolves all disputes in the defendant's favor." *United States v. Gonzales*, 407 F.3d 118, 124 (2d Cir. 2005). In doing so, the court failed to recognize that the rule of lenity applies only to "penal laws." *Wiltberger*, 18 U.S. (5 Wheat.) at 95; *see also Marshall*, 319 S.W.3d at 563 (explaining that the rule of lenity applies to "penal statute[s]"). A penal statute is one that (1) defines a criminal offense or (2) "inflicts a penalty." 1 Blackstone, Commentaries *88; *see Bifulco v. United States*, 447 U.S. 381, 387 (1980) (explaining that the rule of lenity "applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose"); *Marshall*, 319 S.W.3d at 563 (noting that the rule of lenity

encourages the legislature to speak clearly "when marking the boundaries of criminal conduct").

The intellectual disability statute, however, neither defines a criminal offense nor imposes a penalty. *See* Tenn. Code Ann. § 39-13-203(g). It does not define a crime because it does not "prescribe what shall or shall not be done." *The Enterprise*, 8 F. Cas. 732, 735 (C.C.D.N.Y. 1810) (No. 4499) (Livingston, J.) And it does not "inflict[] a penalty," 1 Blackstone 88, because it does not "creat[e] or increas[e] a penalty," *Commonwealth v. Martin*, 17 Mass. 359, 362 (1821); *see Bifulco*, 447 U.S. at 387 (explaining that the Court will not interpret an ambiguity "so as to increase the penalty"). Tennessee Code Annotated § 39-13-202(b) (Suppl. 1987) defines the crime and penalty for Payne's murder convictions. But that statute is not at issue here. The intellectual disability statute is a "collateral review" statute that imposes no penalty of any kind and in fact can only benefit a defendant. Tenn. Code Ann. § 40-30-114(c)(4). The rule of lenity, then, does not apply. *See People v. Johnson*, 77 N.E.3d 615, 624 (Ill. 2017) (concluding that the rule of lenity does not apply to post-conviction proceedings because they are not part of the criminal process but rather a collateral attack on the judgment of conviction).

Even if the intellectual disability statute could be characterized as a resentencing statute, the rule of lenity should not apply to acts of "legislative grace." *Maxwell v. State*, 647 S.W.3d 593, 595 (Tenn. 2019) (describing post-conviction review "as a matter of legislative grace" that is "entirely a creature of statute"); *see* Joshua S. Ha, *Limiting the Rule of*

Lenity, 12 Wake Forest L. Rev. Online 46, 61-65 (2022) (arguing that the rule of lenity should not apply to acts of "legislative grace," like the First Step Act of 2018). First, a resentencing statute is not intended to give a defendant "fair notice" of proscribed criminal behavior. Ha, *Limiting the Rule of Lenity*, *supra*, at 63. And if the statute was enacted after a defendant's sentencing, he could not possibly have been "misled by the ambiguous wording of a statute that had not yet been passed." *Id.* Second, applying the rule of lenity to resentencing statutes would undermine the separation of powers. *Id.* As discussed, trial courts generally lack jurisdiction to modify a final judgment absent express authorization. *Id.* Applying the rule of lenity to resolve the "ambiguity" left by statutory silence would be a judicial usurpation of legislative authority. *Id.* Third, "the vague preference for liberty rationale" must remain subservient to clear legislative directives—and the original trial court's sentencing decisions—that were untouched by the resentencing statute. *Id.* at 64.

For all these reasons, the Court of Criminal Appeals wrongly applied the rule of lenity to the intellectual disability statute. If it reaches the issue, this Court should correct that error to avoid "the inconsistency, unpredictability, and unfairness that would result from expanding the rule of lenity beyond its very limited place in the Court's case law." *Wooden v. United States*, 595 U.S. 360, 379 (2022) (Kavanaugh, J., concurring). Payne benefitted from the legislature's decision to provide a procedural mechanism for him to seek an

intellectual-disability determination. He is entitled to that relief, but nothing more. The rule of lenity changes nothing.

CONCLUSION

This Court should reverse the judgments of the trial court and the Court of Criminal Appeals.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

J. MATTHEW RICE
Solicitor General

s/ Edwin Alan Groves, Jr.

EDWIN ALAN GROVES, JR.
Assistant Attorney General
Criminal Appeals Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-2850
Alan.Groves@ag.tn.gov
B.P.R. No. 036813

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s/ Edwin Alan Groves, Jr.

EDWIN ALAN GROVES, JR.
Assistant Attorney General