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#### **Fourth Circuit Court of Appeals**

(Note: You may access the court's opinion by clicking on the case name)

#### **Court Holds That Federal Habeas Petitioner, Who Was Sentenced to Death, Failed to Show Exception to Procedural Default to Assert Claim Based on *Atkins v. Virginia*, 536 U.S. 304 (2002) (Prohibiting Execution of Intellectually Disabled Person)**

[Prieto v. Zook](#), \_\_\_ F.3d \_\_\_, 2015 WL 3960915 (4th Cir. June 30, 2015). Prieto was convicted in Virginia of capital murder and sentenced to death, and his conviction was affirmed on direct appeal to the Virginia Supreme Court. In state court, he procedurally defaulted his claim based on *Atkins v. Virginia*, 536 U.S. 304 (2002) (prohibiting execution of intellectually disabled person). He filed a federal habeas petition that raised a number of claims. The federal district court dismissed his *Atkins* claim as procedurally defaulted based on what had occurred in state court. The fourth circuit affirmed. The court held that Prieto failed to show that either exception to procedural default applied: (1) cause and prejudice, or (2) a default would yield a fundamental miscarriage of justice. As to the miscarriage of justice exception, the court stated that it cannot conclude, based on the conflicting evidence offered by the state and defendant, that no reasonable juror would find Prieto eligible for the death penalty under *Atkins*.

#### **Court Holds That State Prisoner Sentenced to Life Imprisonment Without Parole and Who Was Serving 20 Years in Solitary Confinement Established Triable Procedural Due Process Claim For That Confinement**

[Incumaa v. Stirling](#), \_\_\_ F.3d \_\_\_, 2015 WL 3973822 (4th Cir. July 1, 2015). In 1988 Incumaa began serving a sentence of life imprisonment without parole in a South Carolina prison. Following his participation in a 1995 prison riot, he was placed in solitary confinement security detention. He has remained in solitary confinement for 20 years, despite not having committed a disciplinary infraction during that time. He filed a lawsuit in federal district court on two grounds, one of which was the state's denial of procedural due process involving his continued detention in solitary confinement. The district court dismissed both grounds. The fourth circuit, after reviewing the evidence, reversed the district court on the procedural due process claim. It held that Incumaa's 20 years of solitary confinement was an atypical and significant hardship under the standard set out in *Wilkinson v. Austin*, 545 U.S. 209 (2005), and other cases, in relation to the general prison population and implicated a liberty interest in avoiding solitary confinement. Furthermore, there was a triable dispute whether the prison's process for determining which inmates are fit for release from solitary confinement meets the minimum requirements of procedural due process.