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NEUROPSYCHOLOGICAL REPORT

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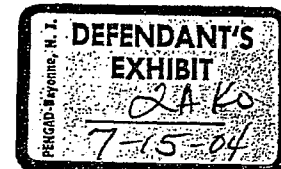
RE: Marvin Lee Wilson

BACKGROUND DATA:

Marvin Lee Wilson is a 46-year old, right-handed, divorced, African-American, male who reports having approximately 10 years formal education while participating in a special education curriculum in several different schools in Southeast Texas. Mr. Wilson has been convicted of capital murder in connection with the killing of Jerry Williams during the course of kidnapping. Mr. Wilson was sentenced to death in 1994. The court reversed his initial sentence and remanded the case for a new trial due to the prosecutor's improper jury argument. Mr. Wilson's re-trial commenced on January 26, 1998. Mr. Wilson was found guilty of capital murder and sentenced to death on retrial. The court affirmed the conviction and sentence on direct appeal in 1999. At that time Mr. Wilson, through his attorneys, had sought post-conviction relief from the courts. At the present time an application for post-conviction writ of habeas corpus has been filed. The attorneys in this case are arguing against application of the death penalty on the basis that Marvin Lee Wilson is mentally retarded. I have been appointed by the court and Mr. Wilson's attorneys to conduct an evaluation to assist in determining whether Mr. Wilson is, in fact, mentally retarded.

I have had the opportunity to see Marvin Lee Wilson in my office for evaluation. I also had the opportunity to review numerous records, including affidavits from various individuals who know and have known Marvin Lee Wilson for many years. The opinions I will render in this report are based upon the sum of all information received and reviewed up to this point in time. These opinions are based on reasonable neuropsychological certainty.

When I saw Mr. Wilson for the initial diagnostic interview, I first of all explained the nature of this evaluation to him. I informed Mr. Wilson that I had been appointed to perform a neuropsychological evaluation that would help determine whether he was mentally retarded and therefore ineligible for the death penalty. Mr. Wilson acknowledged that he already understood this and had no further questions about that issue. I also explained to Mr. Wilson that I would not be assuming a role as treating doctor. Additionally, he was informed that I would be preparing a full written report of my findings. This report will be made available to his attorney. I then had Mr. Wilson sign a consent and authorization form acknowledging his understanding of this agreement.



Neuropsychological Report

I first of all asked Mr. Wilson to tell me a bit about his past history. He indicated that he was born in Southeast Texas. He gave his father's name as Roy H. Wilson. He indicated that he has had no contact with his father during recent years. In fact, he indicated that his father had never been that involved with him even when he was growing up. He stated that his mother's name is Mary Anne Ezola Levine. He indicated uncertainty with regard to the spelling of his mother's last name. He stated that as far as he knows she is living in "an elderly home" somewhere on Pine Street here in Beaumont. His mother apparently does have some limited contact with him. Mr. Wilson indicated that he had three brothers and three sisters. One of the brothers is now deceased. Another brother, Roy W. Wilson, apparently is incarcerated in the same facility that he is. He has had very limited contact with his three sisters while he has been in prison.

Mr. Wilson indicated that when he was growing up he was in quite a few different schools throughout Southeast Texas. These included elementary and junior high schools in China and Beaumont. Specifically he could recall the names of Martin Elementary, China Elementary, Booker T. Washington Elementary, Henderson Junior High School, James Bowie Junior High School, and Beaumont High School. Mr. Wilson indicated that he was in special education classes throughout his years in school. He does not know the exact diagnosis, but indicated that he had learning problems from the very beginning. He stated that even though he remained in school for about 10 years, his reading, writing, and math skills never progressed beyond early elementary level. Even now he reports having significant reading, writing, spelling, and mathematical problems. Mr. Wilson believes that he dropped out of school some time around the 10th grade. Although he reports having taken the GED test several times, he has failed on each occasion.

Mr. Wilson indicated that he has been employed at times when he was not in prison. From his report, however, he has been in prison for about 20 years altogether since leaving school. This has left little time for active employment. In general Mr. Wilson had a very difficult time recalling the exact time frames of his employment. He does recall having worked for a company by the name of P.W.B. Railroad Construction. He performed general labor for that company for about 18 months. He believes that this was in the 1976-1978 time frame. He also recalls having worked at Lamar University doing general labor. Initially he told me that this was in 1984, but he later changed in to 1974. Still, he was uncertain about this. Mr. Wilson also indicated that he has performed construction "here and there", mainly assisting a family member who has a construction business in the local area. This gentleman's name is Mr. James Carrier. Mr. Wilson indicated that he has been incarcerated on present charges for almost 12 years. He believes that he will make 12 years in November of this year.

Mr. Wilson indicated that his neurological history reportedly is remarkable for a head injury that occurred in a motor vehicle accident when he was a child. He stated that in the accident "I got my head split open". He was unable to give me additional details about this, and I have not been able to obtain relevant medical records from that time frame. Consequently, I cannot directly address the potential effects of that injury. Mr.

Neuropsychological Report

Wilson denies any known history of other neurological problems such as CVA, TIA, seizures, neoplasms, or infectious disease of the central nervous system. From a general medical standpoint, he does report having problems with diabetes and hypertension. He does report being on medications for these conditions, although he could not recall the specific names of the medicines. He denied other major health problems such as cancer, heart disease, thyroid dysfunction, or recurrent anemia. In terms of personal habits, Mr. Wilson reports having been a smoker in the past. However, he stated that he quit smoking sometime around 1984. He also reports a history of excessive alcohol use when not in prison. In the past he also had a history of polysubstance abuse. He reports that in the 1970s when not in prison he "used everything". Specifically he mentioned heroin, speed, LSD, morphine, and marijuana. He has not used or had access to drugs in recent years.

I also interviewed Mr. Wilson with regard to his adaptive abilities related to basic self-care and daily living activities. Mr. Wilson indicated that he is now independent in all basic self-care activities. He is able to dress himself without assistance. He is able to feed himself, bathe himself, groom himself, and otherwise perform basic self-care activities. He reports being able to engage in simple meal preparation. He indicated that he can prepare breakfast, including frying eggs. He also can prepare other simple foods such as rice, grits, and boiled items. He also can operate an oven to heat up prepared foods. He knows how to use a telephone, although he cannot look up numbers in the telephone directory because of his very limited reading skills. During this interview, however, he was able to tell me the telephone numbers of several key individuals in his life. He also indicated that he keeps a list of numbers that he might have to call. He was able to demonstrate how to use a telephone to make a call. He also reports being able to drive a car. He told me that he obtained a driver's license when he was an adult. At one point in time he did drive himself back and forth from work. He also has driven out of town to areas less familiar to him as long as he has other people with him to assist him with directions when needed. Mr. Wilson also indicated that he learned how to ride and operate a motorcycle.

As part of this evaluation I also had the opportunity to review records from the Beaumont Independent School District and from the Windham School System. As noted earlier, Mr. Wilson reports having been enrolled in special education classes throughout his years in school. Additionally, he reports having attained very limited reading, writing, math, and spelling skills. Records from BISD confirmed that Mr. Wilson was in fact a very poor student throughout his years in school. He was enrolled in special education classes. Even so, he performed very poorly and failed the 7th grade the first time around. Even during his second year of 7th grade most of his grades were Fs or Ds, with the exception of one B in the first semester in physical Education and a C in speech class. Because he had already been retained in the 7th grade for two years, he apparently was given a social promotion to the 8th grade. During the 1972-73 school year, he continued to do extremely poorly, obtaining failing grades in virtually all subjects except for a C during one semester of physical education and Bs in speech class. During the 1973-73 school

Neuropsychological Report

year he apparently was given another social promotion to the 9th grade. His transcript again reflects a grade of D and F for all of his basic subjects. This was true even though he was enrolled in the Coordinated Vocational Academic Educational program. This was a special education program designed specifically to help students who were two or more years behind grade level. In 10th grade he again participated in the CVAE program. He apparently attended school for one semester obtaining mostly failing grades before dropping out of school.

While incarcerated, Mr. Wilson participated in a program sponsored by the Windham School System. This was a vocational educational program. Mr. Wilson reportedly was enrolled in a building trade course while incarcerated at the Hilltop Unit of TDCJ. Although he completed 642 hours of coursework, he failed to obtain certification for completion of the vocational trades course. His performance was rated below average. Records from the school indicate "limited skill" proficiency rating, which was the second to lowest rating allowable.

I also was able to obtain additional information regarding Mr. Wilson's level of adaptive behavior while growing up. This information was obtained in part from affidavits obtained from Mr. Walter Kelly, an ex brother-in-law, Laurel Gorman, who interviewed Vera Martin, a family friend, Beverly Walters, a cousin, and Kim Armstrong, one of Mr. Wilson's younger sisters. All of these individuals have indicated that Mr. Wilson exhibited delays in development and deficits in adaptive behavior skills when he was growing up. Mr. Kelly indicated that Marvin Wilson always appeared to be "slow". Things had to be repeated to him "over and over before he understood". He required repeated instruction for doing even simple things, such as cutting the grass. Mr. Kelly also noted that Marvin Wilson had significant reading problems. He had a difficult time keeping up when playing football. He could never understand how to run even simple plays. Mr. Kelly also noted that Mr. Wilson seemed to have a difficult time dressing himself properly. He could not color coordinate and sometimes wore mismatched socks. He also would wear his belt so tightly that it would "almost cut off his circulation". Frequently his shirt was buttoned incorrectly. Some of these problems continued even into adolescence. Mr. Kelly indicated that when Mr. Wilson was younger he tried to get some simple jobs involving things like sweeping the floors at a local store. However, he would lose the jobs quickly because he wasn't "fast enough". Mr. Kelly specifically recalled Mr. Wilson working at Wizard Car Wash. Even though he was assigned the simple duty of working at the drying station, he apparently was fired after a few days because of his inability to do the job. Mr. Kelly also noted that Mr. Wilson exhibited difficulty doing any kind of task that required logic or thinking. He never learned how to count money correctly until he was older.

The affidavit of Miss Laurel Gorman was based on an interview that she had conducted with Vera Martin, Mr. Wilson's friend. The affidavit states that Mrs. Martin reported significant limitations in adaptive behavior on the part of Mr. Wilson. She was aware, for example, that when Mr. Wilson worked for his father doing construction he was never

Neuropsychological Report

able to work independently. He always required supervision and being told what to do. She also noted that Mr. Wilson had difficulty handling money and getting bills paid. Because of this, his wife had to handle the family finances. Mr. Wilson did not seem to understand the concept of how a bank account works.

The affidavit of Beverly Walters, Mr. Wilson's cousin, confirms similar limitations in adaptive behavior. Mrs. Walters indicated that when Mr. Wilson was in school he was always "kind of slow". He had a very difficult time writing. His reading skills also were very limited. Other children in the class reportedly would call him "dummy". Mr. Wilson would always walk with the teacher or sit near the teacher at lunchtime to avoid being teased or picked on. Mrs. Walters also indicated that when Mr. Wilson was very young he seemed to have trouble comprehending what the teacher was saying to him. He also was delayed in learning other basic skills such as riding a bicycle and playing games.

The affidavit from Miss Kim Armstrong also confirms similar problems when Mr. Wilson was young. She indicated that Mr. Wilson always sucked his thumb, even as an adult. Mrs. Armstrong stated "I couldn't believe it when I saw him still sucking his thumb when his son was born". She describes Mr. Wilson as being rather childish in general. Even as an adult he had difficulty maintaining employment because of his limitations. He also relied on other family members for assistance in daily living activities such as getting bills paid.

As part of this evaluation I also had the opportunity to interview directly Mrs. Florine Teno. Mrs. Teno is the grandmother of Marvin Lee Wilson's son. Mrs. Teno indicated that her daughter and Marvin Lee Wilson at one time lived together and maintained a common law relationship. However, Mrs. Teno indicated that she has actually known Marvin Lee Wilson since he was 12 or 13 years old. Their families grew up together. Mrs. Teno indicated that from what she recalls of Mr. Wilson's childhood, he "didn't have much of a raising". She has expressed the opinion that neither of Mr. Wilson's parents played much of a role as teacher and parent. When his parents separated, Marvin attempted to assist his mother with raising the younger girls in the family. However, it was very clear that Mr. Wilson was not mentally capable of doing this. She also stated that when growing up Mr. Wilson was never able to read or write very well. Although she could not give me specific information about his educational placement, she is aware that even as an adult he had very limited reading and writing skills. When Mr. Wilson was living with Mrs. Teno's daughter, she basically had to handle all of the family's financial matters since Mr. Wilson was unable to manage money, did not understand the concept of a bank account, and also made bad decisions about how to use the little money they did have. She also recalls that there were times when Mr. Wilson simply had trouble "understanding things". There were times when Mrs. Teno herself had to step in and assist her daughter and Mr. Wilson with handling their personal affairs.

EVALUATION PROCEDURES:

Initial Diagnostic Interview, Medical Record Review (partial), Review of Academic Records from Beaumont Independent School District and the Windham School System, Review of Affidavits (Walter Kelly, Laurel Gorman, Beverly Walters, and Kim Armstrong), Interviews With Family Members, Neurobehavioral Status Examination, Review of Intellectual Testing Performed by Dr. Curtis Wills, Test of Nonverbal Intelligence – II, Raven Standard Progressive Matrices, Peabody Individual Achievement Test – Revised (Reading Recognition, Reading Comprehension, and Mathematics Subtest), Wide Range Achievement Test – 3rd Edition, Language Assessment Battery, Orientation Evaluation, Verbal Selective Reminding Test, Visual Reproduction Subtest, Remote Memory Evaluation.

CLINICAL OBSERVATIONS:

Marvin Lee Wilson is a well-nourished, African-American male who appears his reported age of 46. Mr. Wilson was very pleasant and cooperative during this examination. His motivation and effort were good. I do believe that his test scores accurately reflect his optimal level of functioning at this time.

Mr. Wilson's mood during this examination was relatively normal. Affect was appropriate. He did not exhibit signs of significant clinical depression. He did not appear at all to be anxious or nervous about the testing itself. He established rapport easily. He responded very well to encouragement and support and was able to complete all of the requested procedures without difficulty.

During this examination, Mr. Wilson exhibited no evidence of delusions, hallucinations, or other psychotic manifestations. His conversational speech was fluent and articulate. His functional communication skills were quite good. Mr. Wilson exhibited no evidence of pressure or loose associations. His judgment and reasoning were clearly impaired based on his responses to a variety of general comprehension and verbal abstraction items. However, his insight regarding current circumstances seemed reasonably good. Behaviorally, Mr. Wilson exhibited no evidence of serious inattentiveness or distractibility. Additionally, he exhibited no evidence of physical restlessness, hyperactivity, or impulsivity. He was able to sit and work in a goal-directed fashion for well over an hour at a time. During the evaluation Mr. Wilson's memory for recent events seemed fairly good. Although he was able to relate basic information regarding his life history he could not recall numerous specific facts that an adult normally would remember. Other aspects of his cognitive status will be reported in the paragraphs that follow.

NEUROPSYCHOLOGICAL TEST RESULTS: (see attachment)

DIAGNOSTIC IMPRESSION:

- Axis I: (1) History of polysubstance abuse (304.80, DSM-IV), in remission during years of incarceration.
- Axis II: (1) Mild mental retardation (317, DMS-IV).
- Axis III: (1) Reported history of closed head injury at age 10, sustained in motor vehicle accident. No history of other known neurological conditions.

SUMMARY AND RECOMMENDATIONS:

Marvin Wilson is a 46-year old, Africa-American male who has approximately 10 years formal education while participating in a special education curriculum in several different schools in Southeast Texas. Mr. Wilson has been convicted of capital murder in connection with the killing of Jerry Williams during the course of kidnapping. Although he has been sentenced to death, his attorneys are arguing against application of the death penalty on the basis that Mr. Marvin Lee Wilson is mentally retarded. I have been appointed by the court and his attorneys to conduct an evaluation to assist in making this determination.

Results of my evaluation have taken into consideration current guidelines for diagnosing mental retardation. These guidelines are contained in the 2002 manual on mental retardation published by the American Association on Mental Retardation. Guidelines in the manual stipulate that the individual must meet three separate criteria for a diagnosis of mental retardation. First of all, the individual must exhibit significant limitations in intellectual functioning on a standardized measure of ability. I.Q. scores of approximately 70 or below are considered to be indicative of "significant impairment". Because of the standard error of measurement on most I.Q. tests, the ceiling score on such measures may typically be as high as 75. Scores in this range correspond approximately to two standard deviations below the mean. Additionally, one must demonstrate significant limitations in adaptive behavior (i.e., conceptual skills, social skills, and practical skills). According to the guidelines in the manual, one must demonstrate significant impairment either in one of the three areas mentioned above, or an overall score below 70 on a standardized measure of conceptual, social, and practical skill. Additionally, one must demonstrate that the deficits occurred during the developmental phase before the age of 18.

In addition to the testing that I have conducted, Mr. Wilson has been tested on a number of different occasions over the years, obtaining scores ranging from 61 to 75 on different measures of intellectual ability. During the 1971-72 school year, Mr. Wilson was administered the Lorge-Thorndike measure of intellectual ability. On this test, he earned

a composite score of 73. This scores places him at approximately the 3rd percentile when compared with other children his age. Additional records indicate that Mr. Wilson was tested by the Texas Department of Criminal Justice in May 1987. This testing reportedly revealed an I.Q. of 75, which would place Mr. Wilson at approximately the 5th percentile when compared with others his age. More recently, Mr. Wilson was administered the Wechsler Adult Intelligence Scale – 3rd Edition. This test was administered by Dr. Curtis Wills in May 2004. It is my opinion that the WAIS-III is the most valid indicator of adult intelligence now in current usage. On the WAIS-III Mr. Wilson earned a Verbal I.Q. of 61, a Performance I.Q. of 68, and the Full Scale I.Q. of 61. This places him within the mildly retarded range of intellectual ability and below the 1st percentile. Since Mr. Wilson had just recently been administered the WAIS-III, I did not retest him using that same measure. I did, however, administer the Raven and Toni-II, which are non-verbal measures of intellectual ability, and much less comprehensive than the WAIS-III. He earned a standard score of 75 on the RAVEN. He did perform somewhat higher on the Toni-II, with an I.Q. equivalent of 79. However, it is not at all uncommon for scores on the Toni-II to be 10 or 15 points higher than those obtained on the WAIS-III. I would certainly rely most heavily on the WAIS-III score as an indicator of his level of intellectual functioning.

Additional testing of Mr. Marvin Lee Wilson indicated that he is exhibiting significant deficits in terms of general, expressive, and language development. Although his conversation skills are adequate for effective, basic, functional communication, his general level of language development is well within the impaired range, with a standard score of only 47 on the PPVT-R. This score falls within the moderately impaired range. His writing skills are extremely limited for someone his age. Overall ability on measure of writing and spelling was at 1st to 2nd grade level. Receptively he understands simple conversation fairly well. However, he does have impaired ability to grasp more complex concepts. Additionally, his reading comprehension is very limited, with performance only at a 1st to 2nd grade level.

Additional neuropsychological testing revealed that Mr. Wilson's memory capabilities are well below average for someone his age. Even remote recall of personal and historical information was mildly impaired. Mr. Wilson also exhibited deficits on measures requiring him to learn and retain new information. Visual learning, in particular, was mildly to moderately impaired. Verbal recall was borderline normal.

Next, I evaluated Mr. Wilson's adaptive behavior skills in the area of conceptual reasoning, social skills, and practical skills. His most profound deficits were in the area of conceptual skills. As I have indicated in the paragraphs above, he exhibited substantial deficits in terms of general language development, as well as in reading and writing skills. He also exhibits considerable deficits in money management concepts. During this examination he had difficulty demonstrating the ability to perform even simple tasks involving money management. Historically, he has never been able to handle his own financial affairs, use a bank account, or even make sound decisions with regard to

Neuropsychological Report

spending money. Limitations in self-direction also have been noted throughout the years of development. At various times he has required supervision and assistance in most aspects of self-care and daily living.

I also examined Mr. Wilson's abilities in the domain of social skills. According to the AAMR manual, this area includes interpersonal skills, a sense of responsibility, gullibility, naivety, the ability to follow rules and obey laws, and the ability to avoid victimization. A review of available documentation would suggest that Mr. Wilson was able to develop some basic friendships as a child. However, he was limited in the types of activities that he could perform with peers because of his learning difficulties. He was basically a follower, and had to be told everything to do even when performing simple tasks and playing childhood games. As an adult he has had obvious problems following rules and obeying laws.

Finally, I addressed the domain of practical skills, which is the 3rd critical domain listed in the AAMR guidelines. This domain pertains to personal activities such as eating, dressing, mobility, toileting, and to other instrumental activities of daily living such as meal preparation, taking medication, using the telephone, managing money, using transportation, and doing housekeeping activities. This domain also includes occupational skills and the ability to maintain a safe environment. Mr. Wilson again has shown obvious deficits in these areas when compared with others his age. As a child he was slow in learning basic personal activities, although as an adult he is now independent in basic self-care. However, even as an adult he continues to be unable to perform other practical management skill such as handling money and using the telephone. Although he can use a telephone he cannot look up a number because of his inability to read. Although he has been employed in unskilled labor positions, at least on a limited basis, he reportedly has required constant supervision and assistance. He basically has to be told everything to do, and he could not be relied upon to make independent decisions and engage in self-directed behavior.

Finally, I considered the issue of when these developmental deficiencies first became apparent. Based on available documentation, which included interviews from multiple individuals who knew Mr. Wilson as a child, it is evident that the deficiencies in general intelligence and adaptive behavior have been present since early childhood and well before the age of 18.

In summary, my evaluation of Mr. Marvin Lee Wilson reveals that he does meet the criteria for a diagnosis of mild mental retardation. I do believe that the test results obtained during this examination are a valid estimate of his level of ability. Furthermore, the scores obtained in my evaluation are very consistent with the findings reported by others over a period of many years. Consequently, I do not believe that the current test scores represent an aberration. Additionally, I saw no evidence of malingering or inadequate effort on Mr. Wilson's part during the course of testing.

Neuropsychological Report

If you have additional questions regarding my findings in this case, please feel free to contact me.

Donald E Trahan

Donald E. Trahan, Ph.D., ABPN
Clinical Neuropsychologist

Neuropsychological Test Results

Intelligence: Mr. Wilson was tested very recently by Dr. Curtis Wills, a licensed psychologist here in Beaumont. This testing was conducted on May 6, 2004. On the WAIS-III Mr. Wilson earned a Verbal I.Q. of 61, a Performance I.Q. of 68, and a Full Scale I.Q. of 61. This places him within the mildly retarded range of intellectual ability and below the 1st percentile overall. His Verbal Comprehension Index score was 57 and his Perceptual Organization Index score was 76. As part of my examination, Mr. Wilson was administered the Test of Nonverbal Intelligence-II. On the TONI-II, he earned an I.Q. equivalent of 79. This places him within the borderline range of ability and at the 8th percentile. On the Raven Standard Progressive Matrices, another measure of nonverbal intellectual ability, Mr. Wilson earned a raw score of 34. This places him at the 5th percentile, which would translate into a standard score of approximately 75. Performance on this measure also was in the borderline range.

Language:

Expressive:

Fluency: Speech was fluent, articulate, and without paraphasic error.

Naming: Naming of pictured objects was normal.

Writing: Writing skills were at 1st to 2nd grade level overall. He was unable to write even simple sentences to command without making multiple spelling errors.

Repetition: Sentence repetition was normal for easy sentences but impaired on more complex ones.

Oral Reading: Reading Recognition scores were at the 1st to 2nd grade level.

Other: Vocabulary development, as measured by the PPVT-R was moderately impaired with a standard score of 47. Controlled Oral Word Association, a measure of word fluency, was borderline normal with performance at the 5th percentile.

Receptive:

Oral comprehension: Intact for conversational speech and simple commands. Mr. Wilson also understood test directions fairly well.

Reading comprehension: Comprehension of sentences and paragraphs was markedly impaired, with performance only at a 1st to 2nd grade level.

Praxis: Not Assessed.

Orientation: Generally intact for person, place, time, and circumstances.

Memory:

Immediate Span: Digit recall was low average. Verbal supraspan was borderline normal.

Long-Term Memory:

Verbal: Recall of a word list was borderline normal for both long-term storage and consistent long-term retrieval.

Visual: Drawing designs from memory was mildly impaired in acquisition but moderately impaired on delay.

Remote Memory: Recall of personal and historical information was fairly well preserved for general knowledge, but mildly impaired for details.

Visual-Constructive Ability: On recent testing conducted by Dr. Wills, Mr. Wilson exhibited low average performance on block design and low average to average performance on puzzle assembly.

Achievement: On the WRAT-III Mr. Wilson's performance was at the 1st grade level on reading, spelling, and arithmetic. His standard scores were below 45 for all tasks, when compared with others his age. On the PIAT-R Mr. Wilson earned grade level scores of 1.4 in Reading Recognition, 1.7 in Reading Comprehension, and 2.1 in Mathematics. He earned standard scores of 55 on all three measures.