

SUPREME COURT OF DELAWARE

Norcross v. State

36 A.3d 756 (Del. 2011) · No. No. 218, 2010 · Decided December 21, 2011

SUMMARY

The Supreme Court of Delaware affirmed the denial of Adam Norcross's motion for postconviction relief in a capital murder case. The court rejected claims of ineffective assistance concerning mitigation evidence, prosecutorial misconduct, penalty-phase jury instructions, and the burden of proof for weighing aggravating and mitigating circumstances. It concluded that the additional mitigation evidence would not have created a reasonable probability of a different sentencing result.

CASE DETAILS

|                       |                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Delaware                                                                                                                                                                         |
| WRITING FOR THE COURT | Steele, Chief Justice; Holland, Justice; Berger, Justice; Jacobs, Justice; Ridgely, Justice                                                                                                       |
| JURISDICTION          | Delaware                                                                                                                                                                                          |
| DECIDED               | December 21, 2011                                                                                                                                                                                 |
| DOCKET                | No. 218, 2010                                                                                                                                                                                     |
| DISPOSITION           | affirmed                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Appeal from the denial of a motion for postconviction relief in a capital murder case.                                                                                                            |
| STANDARD OF REVIEW    | Postconviction relief is reviewed for abuse of discretion; legal questions and constitutional violations are reviewed de novo. Constitutional ineffective-assistance claims are reviewed de novo. |
| PRECEDENTIAL VALUE    | Published, precedential en banc opinion                                                                                                                                                           |
| PARTIES               | Adam Norcross v. State of Delaware                                                                                                                                                                |

TOPICS

- state post-conviction relief
- ineffective assistance
- sentencing
- prosecutorial misconduct
- jury instructions

PRACTICE AREAS

- criminal law
- capital sentencing
- post-conviction relief
- ineffective assistance of counsel
- criminal procedure

## QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to present additional mitigation evidence at the capital penalty hearing.
2. Whether alleged prosecutorial misconduct during the penalty phase warranted postconviction relief.
3. Whether the trial court's penalty-phase jury instructions were deficient because they referred to giving the jury recommendation substantial rather than great weight and omitted the phrase conscience of the community.
4. Whether Delaware's death-penalty procedure violated *Ring v. Arizona* by not requiring the aggravating circumstances to outweigh mitigating circumstances beyond a reasonable doubt.

## HOLDINGS

1. Norcross failed to establish prejudice under *Strickland* because the additional mitigation evidence, considered with the existing evidence and the State's counter-mitigation evidence, did not create a reasonable probability that the penalty-phase result would have been different.
2. The first three prosecutorial-misconduct claims were procedurally barred under Delaware Superior Court Criminal Rule 61, and the remaining claims lacked merit or did not establish ineffective assistance.
3. The trial court did not err by instructing that the jury's recommendation would receive substantial consideration rather than great weight or by omitting the phrase conscience of the community.
4. Norcross's constitutional challenge to Delaware's sentencing procedure was barred as previously adjudicated, and Delaware's procedure did not violate *Ring* because the jury's finding of a statutory aggravating circumstance satisfied *Ring*'s narrowing requirement.

## KEY QUOTATIONS

*"We reaffirm our adherence to the standard, established in Strickland, that "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.""* (\*771)

*"Although the defendant is entitled to a correct statement of the substantive law, a specific instruction that the jury represents the conscience of the community is not mandated."* (\*774)

## FACTUAL BACKGROUND

Norcross was convicted of participating in the 1996 home-invasion murder of Kenneth Warren during a robbery. The trial court found one statutory aggravating circumstance and several nonstatutory aggravating circumstances, including the killing in Warren's home in front of his family, Norcross's admitted criminality, and threats to witnesses. At the postconviction hearing, Norcross presented additional lay, documentary, psychological, and psychiatric mitigation evidence that had not been presented at the penalty hearing.

## PROCEDURAL HISTORY

A Kent County Superior Court jury convicted Norcross of three counts of first-degree murder and related offenses, and the trial judge imposed three death sentences in 2001. The Supreme Court of Delaware affirmed the convictions and sentences on direct appeal, and the United States Supreme Court denied certiorari. Norcross later filed a Rule 61 motion for postconviction relief. After an evidentiary hearing, the Superior Court denied relief; the Delaware Supreme Court remanded for reconsideration of the ineffective-assistance claim and reweighing of the mitigation evidence, received a further Superior Court opinion, and affirmed the denial of postconviction relief.

## DISPOSITION

affirmed

## CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)
- Williams v. Taylor, 529 U.S. 362 (2000)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Rompilla v. Beard, 545 U.S. 374 (2005)
- Porter v. McCollum, 558 U.S. 30 (2009)
- Sears v. Upton, 561 U.S. 945 (2010)
- Jermyn v. Horn, 266 F.3d 257 (3d Cir. 2001)
- Outten v. Kearney, 464 F.3d 401 (3d Cir. 2006)
- Swan v. State, 28 A.3d 362 (Del. 2011)
- Brice v. State, 815 A.2d 314 (Del. 2003)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Norcross v. State, 816 A.2d 757 (Del. 2003)
- Zebroski v. State, 12 A.3d 1115 (Del. 2010)
- Hall v. State, 788 A.2d 118 (Del. 2001)
- Cabrera v. State, 747 A.2d 543 (Del. 2000)
- Red Dog v. State, 616 A.2d 298 (Del. 1992)