

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Harris v. Sharp

941 F.3d 962 (10th Cir. 2019) · No. No. 17-6109 · Decided October 28, 2019

SUMMARY

The Tenth Circuit reviewed Jimmy Dean Harris’s federal habeas appeal from his Oklahoma death sentence. The court held that counsel was ineffective for failing to seek a pretrial hearing on whether Harris had an intellectual disability that would bar execution, reversed and remanded for an evidentiary hearing on that claim, and remanded for reconsideration of cumulative error. The court affirmed the denial of relief on Harris’s other claims.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Bacharach, Circuit Judge; Timkovich, Chief Judge; McHugh, Circuit Judge
JURISDICTION	Federal
DECIDED	October 28, 2019
DOCKET	No. 17-6109
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Federal habeas appeal from the denial of relief in a capital case. The Tenth Circuit reviewed claims involving ineffective assistance of counsel, mitigation evidence, jury instructions and closing arguments concerning mitigation, victim-impact testimony, and cumulative error.
STANDARD OF REVIEW	The Tenth Circuit reviewed the federal district court's legal analysis de novo. For claims adjudicated on the merits by the Oklahoma Court of Criminal Appeals, review was governed by 28 U.S.C. § 2254(d), including deferential review of the state court's factual findings and legal conclusions. The court applied de novo review to the deficiency prong of the intellectual-disability hearing claim because the OCCA had not adjudicated that prong on the merits, but applied § 2254(d) to the prejudice prong.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Appeals for the Tenth Circuit

PARTIES

Jimmy Dean Harris v. Tommy Sharp, Interim Warden, Oklahoma State Penitentiary

TOPICS

federal habeas corpus ineffective assistance competency to be executed cruel and unusual punishment
appellate procedure

PRACTICE AREAS

Federal habeas corpus Capital sentencing Ineffective assistance of counsel Post-conviction relief
Criminal procedure

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to request a pretrial hearing to determine whether Harris had an intellectual disability that would make him ineligible for execution.
2. Whether Harris was prejudiced by counsel's failure to request the intellectual-disability hearing and whether an evidentiary hearing was required to resolve that prejudice question.
3. Whether counsel was ineffective for failing to present additional mitigation evidence concerning intellectual disability, borderline intellectual functioning, or mental illness.
4. Whether the jury instruction defining mitigating circumstances and the prosecutors' closing arguments improperly restricted the jury's consideration of mitigation evidence under the Eighth and Fourteenth Amendments.
5. Whether victim-impact testimony and other alleged errors required habeas relief.
6. Whether cumulative error required relief or further proceedings.

HOLDINGS

1. Counsel performed deficiently by failing to request a pretrial hearing on Harris's intellectual disability. The hearing presented a risk-free opportunity to establish ineligibility for the death penalty, and the existing evidence supplied a reasonable basis to request it.
2. Harris was entitled to an evidentiary hearing because the OCCA's no-prejudice determination rested on an unreasonable factual finding concerning expert Martin Krinsky's opinion, and the conflicting evidence had never been evaluated by a factfinder under the applicable Oklahoma intellectual-disability standard.
3. Harris was not entitled to habeas relief on the claim that counsel inadequately presented evidence of borderline intellectual functioning.
4. Harris was not entitled to habeas relief on the claim that counsel inadequately presented mental-health mitigation evidence.

5. The OCCA reasonably rejected Harris's constitutional challenge to the mitigation instruction and closing arguments. Although the first prosecutor improperly argued that mitigation had to reduce moral culpability, the instructions as a whole and the second prosecutor's argument reasonably could be understood to permit consideration of all mitigation evidence.
6. The cumulative-error claim was remanded for reconsideration because the court was remanding the intellectual-disability ineffective-assistance claim.

KEY QUOTATIONS

“In our view, the district court should have conducted an evidentiary hearing to decide this claim, so we reverse and remand for further consideration.” (1)

“Bypassing this opportunity constituted a deficiency in the representation.” (17)

“Although factual disputes preclude us from deciding the issue of prejudice, Mr. Harris is entitled to an evidentiary hearing.” (36)

“Through these statements, the prosecutor effectively told the jury that the mitigation evidence mattered only if it tended to reduce Mr. Harris’s culpability, creating a risk that one or more jurors believed that they could not consider constitutionally relevant evidence of mitigation.” (75)

FACTUAL BACKGROUND

Harris shot at his former wife, her employer Merle Taylor, and Taylor's daughter after marital difficulties, a divorce, restraining orders, and a dispute over retrieving his tools. Taylor was killed and Harris's former wife was wounded. Harris was convicted of first-degree murder and attempted murder, and after a penalty-phase retrial the jury found aggravating circumstances and again recommended death. The record contained conflicting evidence concerning Harris's intellectual functioning, adaptive deficits, and mental illness, including IQ scores below 70 and expert opinions differing on whether he had an intellectual disability.

PROCEDURAL HISTORY

Harris was convicted of first-degree murder and sentenced to death. The Oklahoma Court of Criminal Appeals reversed the original death sentence and remanded for a penalty-phase retrial; after the 2005 retrial, the death sentence was reimposed. Harris pursued direct and state post-conviction review, then filed a federal habeas petition in the Western District of Oklahoma. The district court denied relief. The Tenth Circuit reversed and remanded for an evidentiary hearing on prejudice arising from counsel's failure to request a pretrial intellectual-disability hearing and for reconsideration of cumulative error, while affirming the denial of relief on the remaining claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct an evidentiary hearing on prejudice arising from counsel's failure to request a pretrial intellectual-disability hearing, permit expert testimony concerning whether Harris satisfies Oklahoma's applicable intellectual-disability test, and reconsider the cumulative-error claim in light of the remanded proceedings. The denial of habeas relief on the other claims was affirmed.

CASES CITED

- *Atkins v. Virginia*, 536 U.S. 304 (2002)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *State ex rel. Lane v. Bass*, 87 P.3d 629 (Okla. Crim. App. 2004)
- *Murphy v. State*, 54 P.3d 556 (Okla. Crim. App. 2002)
- *Williams v. Taylor*, 529 U.S. 362 (2000)
- *Wiggins v. Smith*, 539 U.S. 510 (2003)
- *Tennard v. Dretke*, 542 U.S. 274 (2004)
- *Lockett v. Ohio*, 438 U.S. 586 (1978)
- *Eddings v. Oklahoma*, 455 U.S. 104 (1982)
- *Boyde v. California*, 494 U.S. 370 (1990)
- *Hanson v. Sherrod*, 797 F.3d 810 (10th Cir. 2015)
- *Harris v. State*, 164 P.3d 1103 (Okla. Crim. App. 2007)
- *Lott v. Trammell*, 705 F.3d 1167 (10th Cir. 2013)
- *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009) (en banc)
- *Smith v. Sharp*, 935 F.3d 1064 (10th Cir. 2019)
- *Littlejohn v. Trammell*, 704 F.3d 817 (10th Cir. 2013)
- *Littlejohn v. Royal*, 875 F.3d 548 (10th Cir. 2017)
- *Grant v. Royal*, *Grant v. Royal*, 886 F.3d 874 (10th Cir. 2018)
- *Simpson v. Carpenter*, 912 F.3d 542 (10th Cir. 2019)
- *Cullen v. Pinholster*, 563 U.S. 170 (2011)
- *Fry v. Pliler*, 551 U.S. 112 (2007)