

SUPREME COURT OF MISSISSIPPI

Doss v. State

882 So. 2d 176 (Miss. 2004) · No. No. 1999-DR-00296-SCT · Decided July 15, 2004

SUMMARY

The Supreme Court of Mississippi considers Anthony Doss's application for leave to file a motion to vacate his capital-murder conviction and death sentence. The court grants leave for an evidentiary hearing on ineffective assistance of counsel during the penalty phase and mental retardation under *Atkins v. Virginia*, while denying relief on the remaining claims.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, Presiding Justice, for the Court; Cobb, Presiding Justice; Smith, Chief Justice; Waller, Presiding Justice; Carlson, Justice; Graves, Justice; Dickinson, Justice; Easley, Justice; Diaz, Justice; Randolph, Justice
JURISDICTION	Mississippi
DECIDED	July 15, 2004
DOCKET	No. 1999-DR-00296-SCT
DISPOSITION	other
PROCEDURAL POSTURE	Capital defendant's application for leave to file a motion to vacate his judgment and death sentence under Mississippi's post-conviction-relief procedures.
STANDARD OF REVIEW	For ineffective-assistance claims, the court applied Strickland's deficient-performance and prejudice test. Claims procedurally barred under Mississippi Code section 99-39-21 were not reached on the merits. For the <i>Atkins</i> claim, the court applied the Chase procedure requiring an expert threshold showing and a circuit-court determination by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; en banc and precedential.
PARTIES	Anthony Doss v. State of Mississippi

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

sentencing

cruel and unusual punishment

PRACTICE AREAS

state post-conviction relief

capital punishment

ineffective assistance of counsel

death penalty sentencing

intellectual disability

QUESTIONS PRESENTED

1. Whether Doss was entitled to post-conviction relief or an evidentiary hearing because a juror failed to disclose a prior civil relationship with the district attorney.
2. Whether Doss's conviction should be reversed because jurors allegedly saw him shackled during trial.
3. Whether trial counsel was ineffective for failing to preserve issues that were procedurally barred on direct appeal.
4. Whether trial counsel was ineffective during the penalty phase for failing to investigate and present available mitigating evidence.
5. Whether Doss was entitled to proceed on a claim that he was intellectually disabled and therefore constitutionally ineligible for execution under *Atkins v. Virginia*.
6. Whether the avoiding-arrest aggravating circumstance was improperly submitted to the jury.
7. Whether Doss's death sentence was disproportionate because he was not the shooter or principal instigator.
8. Whether the cumulative effect of alleged errors required a new trial or sentencing hearing.

HOLDINGS

1. Doss made a sufficient showing under *Strickland* to proceed in the circuit court on his claim that counsel performed deficiently by failing to investigate and present available mitigating evidence during the death-penalty sentencing phase.
2. Doss satisfied the threshold showing required to present an *Atkins* claim in the circuit court, and the circuit court must determine the claim under the standards and procedures adopted in *Chase v. State*.
3. Doss was denied leave to proceed on the juror-dishonesty, shackling, guilt-phase ineffective-assistance, avoiding-arrest, proportionality, and cumulative-error claims.

KEY QUOTATIONS

“When counsel makes choices of which witnesses to use or not use, those choices must be made based on counsel’s proper investigation.” (187)

“Counsel’s minimum duty is to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” (187)

“The trial judge will make such determination, by a preponderance of the evidence, after receiving evidence presented by the defendant and the State.” (191)

FACTUAL BACKGROUND

Doss participated with Freddie Bell in the armed robbery of Sparks Stop-N-Shop in Grenada County on May 6, 1991. Robert C. Bell was shot and killed during the robbery; physical evidence linked a recovered .38-caliber pistol to several bullets removed from the victim, and Doss's fingerprints were found on a box behind the store counter. Doss gave inconsistent accounts of the crime, including a statement to police that he later admitted contained fabrications. The post-conviction record included evidence that trial counsel conducted little mitigation investigation, did not obtain available educational, medical, or psychological records, and did not adequately investigate or present potential penalty-phase witnesses.

PROCEDURAL HISTORY

Doss was convicted of capital murder and sentenced to death in the Grenada County Circuit Court. The Mississippi Supreme Court affirmed the conviction and sentence on direct appeal, and the United States Supreme Court denied certiorari. Doss then sought leave to pursue post-conviction relief, asserting eight claims. The Mississippi Supreme Court granted leave to proceed in the circuit court on ineffective assistance of counsel during the penalty phase and on mental retardation under Atkins, while denying leave on the remaining claims.

DISPOSITION

other

REMAND INSTRUCTIONS

Doss may proceed in the Grenada County Circuit Court with an evidentiary hearing on penalty-phase ineffective assistance of counsel and with an Atkins mental-retardation claim. The circuit court must apply the Chase standards and procedures, including the required expert evidence and a preponderance-of-the-evidence determination placed in the record.

CASES CITED

- Doss v. State, 709 So. 2d 369 (Miss. 1996)
- Atkins v. Virginia, 536 U.S. 304 (2002)
- Chase v. State, 873 So. 2d 1013 (Miss. 2004)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Odom v. State, 355 So. 2d 1381 (Miss. 1978)
- Rush v. State, 301 So. 2d 297 (Miss. 1974)
- McGilberry v. State, 843 So. 2d 21 (Miss. 2003)
- Burns v. State, 813 So. 2d 668 (Miss. 2001)
- Davis v. State, 743 So. 2d 326 (Miss. 1999)

- Woodward v. State, 635 So. 2d 805 (Miss. 1993)
- Leatherwood v. State, 473 So. 2d 964 (Miss. 1985)
- Taylor v. State, 672 So. 2d 1246 (Miss. 1996)
- Ballenger v. State, 667 So. 2d 1242 (Miss. 1995)
- Davis v. State, 660 So. 2d 1228 (Miss. 1995)
- Reddix v. Thigpen, 554 F. Supp. 1212 (S.D. Miss. 1983)
- Reddix v. Thigpen, 728 F.2d 705 (5th Cir. 1984)
- Carr v. State, 655 So. 2d 824 (Miss. 1995)
- Jordan v. State, 728 So. 2d 1088 (Miss. 1998)

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