

SUPREME COURT OF MISSISSIPPI

Russell v. State

849 So. 2d 95 (Miss. 2003) · No. No. 97-DR-00046-SCT · Decided June 19, 2003

SUMMARY

The Supreme Court of Mississippi reviews Willie C. Russell’s amended petition for post-conviction relief following his capital-murder conviction and death sentence for killing a correctional officer. The court denies relief on all claims except the claim of mental retardation, on which it permits Russell to seek relief in the Sunflower County Circuit Court to vacate his death sentence. The opinion also addresses recanted testimony, alleged juror misconduct, and other challenges to the reliability of the conviction and sentence.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Justice, for the Court; En banc court
JURISDICTION	Mississippi
DECIDED	June 19, 2003
DOCKET	No. 97-DR-00046-SCT
DISPOSITION	other
PROCEDURAL POSTURE	Russell sought post-conviction collateral relief from his capital-murder conviction and death sentence. The Mississippi Supreme Court denied relief on all claims except the claim that Russell was mentally retarded, on which it granted leave to file a post-conviction motion in the Sunflower County Circuit Court seeking to vacate the death sentence.
STANDARD OF REVIEW	The court reviewed post-conviction claims under the Mississippi Post-Conviction Collateral Relief Act, applied procedural bars and res judicata where applicable, reviewed recanted-testimony new-trial determinations for abuse of discretion, and applied the Strickland deficient-performance and prejudice standard to ineffective-assistance claims.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court en banc opinion; precedential.
PARTIES	Willie C. Russell v. State of Mississippi

TOPICS

state post-conviction relief

post-conviction relief

sentencing

ineffective assistance

evidence

PRACTICE AREAS

state post-conviction relief

capital criminal procedure

ineffective assistance of counsel

evidence preservation

death penalty sentencing

QUESTIONS PRESENTED

1. Whether the alleged cumulative errors rendered Russell's conviction or sentencing verdict constitutionally unreliable.
2. Whether alleged juror misconduct, inaccurate voir dire responses, extraneous contacts, Bible access, or knowledge of the prior death sentence warranted post-conviction relief.
3. Whether the State suppressed or destroyed exculpatory, impeachment, or physical evidence in violation of its disclosure and preservation obligations.
4. Whether the use of the transcript of witness A.J. Smith's prior testimony at the second sentencing hearing violated Russell's rights or resulted from ineffective assistance.
5. Whether defense counsel rendered ineffective assistance during the guilt phase or penalty phase.
6. Whether Russell was denied attorney-client privilege or was improperly required to testify following a medication overdose.
7. Whether Russell was entitled to relief based on recanted testimony or alleged perjured testimony.
8. Whether Russell's alleged mental retardation warranted an opportunity to seek vacatur of his death sentence in circuit court.

HOLDINGS

1. Recanted testimony does not automatically entitle a defendant to a new trial; the court must evaluate all circumstances, and the determination is reviewed for abuse of discretion.
2. A defendant seeking relief based on lost or destroyed evidence must show that the evidence would have played a significant role in the defense, that its exculpatory nature and value were apparent before its loss, and that comparable evidence could not be obtained by other means.
3. A defendant claiming ineffective assistance must prove deficient performance and prejudice sufficient to deprive the defendant of a fair trial; counsel's performance is evaluated under a highly deferential totality-of-the-circumstances inquiry.
4. Counsel was not ineffective for failing to object to or supplement the self-defense instruction because the instruction was not improper under Mississippi law when Russell was tried, and Russell's newly asserted gang-conspiracy theory lacked evidentiary support at trial.
5. Russell was entitled to seek post-conviction relief in the Sunflower County Circuit Court based on his alleged mental retardation, including a motion to vacate his death sentence.

KEY QUOTATIONS

“After thorough consideration the Court denies relief to Russell on all issues but one, that being Russell's claim that he is mentally retarded. On that issue the Court grants Russell leave to file in the Sunflower County Circuit Court a motion seeking post-conviction relief vacating his death sentence based upon his alleged mental retardation.” (at 102-03)

“The State has the duty to preserve evidence, but that duty is limited to the evidence which "might be expected to play a significant role in the suspect's defense.”” (at 114)

“In order to prevail on a claim of ineffective assistance of counsel, a defendant must prove that his attorney's performance was deficient, and that the deficiency was so substantial as to deprive the defendant of a fair trial.” (at 122)

FACTUAL BACKGROUND

While incarcerated at the Mississippi State Penitentiary at Parchman, Russell ambushed Correctional Officer Argentra Cotton with a homemade knife on July 18, 1989. Russell stabbed Cotton multiple times after Cotton entered the zone where Russell was hiding; Cotton later died from internal bleeding. Russell testified that the confrontation arose after Cotton allegedly took money from him and failed to deliver yeast, while Russell's post-conviction petition offered a new theory that Cotton was facilitating a gang plot against him.

PROCEDURAL HISTORY

Russell was convicted of capital murder and sentenced to death for killing Mississippi Department of Corrections officer Argentra Cotton. The Mississippi Supreme Court affirmed the conviction but reversed and remanded the original death sentence because the circuit court had not determined Russell's habitual-offender status before sentencing. After a second sentencing jury again imposed death, the Supreme Court affirmed the sentence, and the United States Supreme Court denied certiorari. Russell then filed an amended post-conviction petition in the Mississippi Supreme Court; the court denied all claims except the mental-retardation claim, for which it authorized a motion in circuit court.

DISPOSITION

other

REMAND INSTRUCTIONS

Russell was granted leave to file in the Sunflower County Circuit Court a motion seeking post-conviction relief to vacate his death sentence based on alleged mental retardation. Relief was denied on all other claims.

CASES CITED

- Russell v. State, 607 So. 2d 1107 (Miss. 1992)
- Russell v. State, 670 So. 2d 816 (Miss. 1995)
- Turner v. State, 573 So. 2d 657 (Miss. 1990)
- Bradley v. State, 214 So. 2d 815, 817 (Miss. 1968)

- *Peeples v. State*, 218 So. 2d 436, 438 (Miss. 1969)
- *Williams v. State*, 669 So. 2d 44, 53 (Miss. 1996)
- *Buckley v. State*, 772 So. 2d 1059, 1063-64 (Miss. 2000)
- *Jones v. Kemp*, 706 F. Supp. 1534 (N.D. Ga. 1989)
- *State v. Harrington*, 627 S.W.2d 345 (Tenn. 1981)
- *Northup v. State*, 793 So. 2d 618, 623-24 (Miss. 2001)
- *California v. Trombetta*, 467 U.S. 479, 488 (1984)
- *Evans v. State*, 725 So. 2d 613, 657-58 (Miss. 1997)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *Holly v. State*, 716 So. 2d 979, 989 (Miss. 1998)
- *Johnson v. State*, 529 So. 2d 577 (Miss. 1988)
- *Reddix v. State*, 731 So. 2d 591 (Miss. 1999)
- *Gray v. State*, 728 So. 2d 36, 75 (Miss. 1998)
- *Hickson v. State*, 472 So. 2d 379, 384 (Miss. 1985)
- *Batson v. Kentucky*, 476 U.S. 79 (1986)
- *Bouchillon v. Collins*, 907 F.2d 589 (5th Cir. 1990)
- *Hansen v. State*, 592 So. 2d 114, 142 (Miss. 1991)
- *Edwards v. Arizona*, 451 U.S. 477 (1981)

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