

SUPREME COURT OF MISSISSIPPI

Gray v. State

887 So. 2d 158 (Miss. 2004) · No. 1999-DR-00592-SCT · Decided September 16, 2004

SUMMARY

The Supreme Court of Mississippi denied Rodney Gray leave to pursue post-conviction relief from his capital-murder conviction and death sentence. The court rejected claims of ineffective assistance of counsel, including challenges concerning venue, continuance, jury venire, the indictment, jailhouse confessions, mitigation evidence, and trial strategy. The court also rejected Gray's claims concerning mental retardation under *Atkins v. Virginia* and confrontation rights relating to DNA evidence.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Mississippi                                                                                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Cobb, Presiding Justice; Smith, C.J.; Waller, P.J.; Easley, J.; Carlson, J.; Graves, J.; Dickinson, J.; Randolph, J.; Cobb, P.J.                                                                                                                                                                                                                                                            |
| JURISDICTION          | Mississippi                                                                                                                                                                                                                                                                                                                                                                                 |
| DECIDED               | September 16, 2004                                                                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | 1999-DR-00592-SCT                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | writ_denied                                                                                                                                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Gray sought leave to file a petition for post-conviction relief in the trial court after his capital-murder conviction and death sentence had been affirmed on direct appeal and the United States Supreme Court denied certiorari.                                                                                                                                                         |
| STANDARD OF REVIEW    | The court applied the Strickland deficient-performance and prejudice standard to ineffective-assistance claims and required Gray to satisfy the statutory burden and make a sufficient showing for post-conviction relief or an evidentiary hearing. Claims previously decided on direct appeal were barred by res judicata or procedural bar unless cause and actual prejudice were shown. |
| PRECEDENTIAL VALUE    | Published, precedential decision of the Supreme Court of Mississippi                                                                                                                                                                                                                                                                                                                        |
| PARTIES               | Rodney Gray v. State of Mississippi                                                                                                                                                                                                                                                                                                                                                         |

TOPICS

state post-conviction relief

ineffective assistance

sentencing

cruel and unusual punishment

sixth amendment

## PRACTICE AREAS

criminal law

capital punishment

post-conviction relief

criminal procedure

constitutional law

## QUESTIONS PRESENTED

1. Whether Gray established ineffective assistance of trial counsel under Strickland.
2. Whether Gray made a sufficient showing that he was mentally retarded and therefore constitutionally exempt from execution under *Atkins v. Virginia*.
3. Whether admission of DNA evidence through the supervising forensic serologist violated the Sixth Amendment Confrontation Clause.
4. Whether the capital-sentencing jury instructions violated the Eighth Amendment by permitting a death sentence without a specific finding that Gray intended to kill.
5. Whether the sentencing verdict was defective because the written verdict did not expressly state that aggravating circumstances were found beyond a reasonable doubt.
6. Whether the asserted errors had a cumulative prejudicial effect.
7. Whether aggravating circumstances were required to be charged in the indictment under *Apprendi* and *Ring*.
8. Whether Gray's death sentence was disproportionate to the offense.

## HOLDINGS

1. A post-conviction claimant must prove both deficient performance and resulting prejudice under Strickland; Gray failed to establish either a constitutionally deficient performance or prejudice on his asserted claims.
2. Gray failed to establish that he was mentally retarded under the definition adopted by the court and therefore was not entitled to a hearing or post-conviction relief under *Atkins*.
3. The supervising forensic serologist's testimony about DNA testing performed under her direction was permissible and did not violate Gray's Sixth Amendment right to confront witnesses.
4. Mississippi may instruct the sentencing jury on all four intent-related factors in Mississippi Code section 99-19-101(7), and the jury need find only one factor beyond a reasonable doubt to satisfy the constitutional limitation recognized in *Enmund* and *Tison*.
5. The aggravating circumstances supporting Gray's death sentence were not required to be included in the capital-murder indictment, and *Ring v. Arizona* did not decide that indictment issue.
6. When no individual reversible error has been shown, there is no reversible cumulative error.

## KEY QUOTATIONS

*“To receive post-conviction relief for ineffective assistance of counsel, a claimant must demonstrate (1) that counsel’s performance was deficient and (2) that the deficiency prejudiced the defense of the case.” (164)*

*“The essential feature of Mental Retardation is significantly sub-average general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B).” (168-169)*

*“Therefore, this issue is without merit. He was able to cross-examine and confront Ms. Smrz.” (171)*

## FACTUAL BACKGROUND

Grace Blackwell, a 79-year-old woman, was abducted after withdrawing \$1,200 from a bank and was later found dead from a shotgun blast; the evidence also showed that she had been raped and run over by a car. Witnesses identified Gray as driving Blackwell's car, money was found hidden in the bathroom vent of his girlfriend's trailer, and Gray's clothing and boots were recovered nearby. Trial evidence included footprint, DNA, and jailhouse-confession testimony. Gray's defense presented mitigating evidence, and a jury unanimously imposed the death penalty.

## PROCEDURAL HISTORY

A Newton County jury convicted Gray of capital murder and sentenced him to death. The Mississippi Supreme Court affirmed the conviction and sentence on direct appeal, and the United States Supreme Court denied certiorari. Gray then applied for leave to pursue post-conviction relief, asserting ineffective assistance of counsel, mental retardation under Atkins, confrontation and DNA-evidence claims, sentencing and jury-instruction errors, cumulative error, and related constitutional claims. The Mississippi Supreme Court denied the application.

## DISPOSITION

writ\_denied

## CASES CITED

- Gray v. State, 728 So. 2d 36 (Miss. 1998)
- Gray v. Mississippi, 526 U.S. 1055 (1999)
- Williams v. State, 669 So. 2d 44, 52 (Miss. 1996)
- Ormond v. State, 599 So. 2d 951, 962 (Miss. 1992)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Stringer v. State, 454 So. 2d 468, 477 (Miss. 1984)
- Cabello v. State, 524 So. 2d 313, 315 (Miss. 1988)
- Mohr v. State, 584 So. 2d 426, 430 (Miss. 1991)
- Davis v. State, 743 So. 2d 326, 334 (Miss. 1999)

- Lanier v. State, 533 So. 2d 473, 477 (Miss. 1988)
- Clark v. Collins, 19 F.3d 959, 966 (5th Cir. 1994)
- Williams v. State, 722 So. 2d 447, 449-50 (Miss. 1998)
- McNeal v. State, 551 So. 2d 151, 158 (Miss. 1989)
- Atkins v. Virginia, 536 U.S. 304 (2002)
- Robinson v. California, 370 U.S. 660, 667 (1962)
- Ford v. Wainwright, 477 U.S. 399, 405, 416-17 (1986)
- Foster v. State, 848 So. 2d 172, 174 (Miss. 2003)
- Foster v. State, 687 So. 2d 1124, 1130, 1134 (Miss. 1996)
- United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989)
- King v. State, 679 So. 2d 208, 211 (Miss. 1996)
- Jordan v. State, 786 So. 2d 987, 1026 (Miss. 2001)
- Carr v. State, 655 So. 2d 824, 838-39 (Miss. 1995)
- Simmons v. State, 805 So. 2d 452, 507 (Miss. 2001)
- Grayson v. State, 806 So. 2d 241, 252 (Miss. 2001)
- White v. State, 532 So. 2d 1207, 1219 (Miss. 1988)
- Payne v. State, 462 So. 2d 902, 904 (Miss. 1984)
- Byrom v. State, 863 So. 2d 836, 847 (Miss. 2003)
- McFee v. State, 511 So. 2d 130, 136 (Miss. 1987)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Ring v. Arizona, 536 U.S. 584, 597 n.4, 609 (2002)
- Walton v. Arizona, 497 U.S. 639, 647-49 (1990)
- Williams v. State, 445 So. 2d 798, 804-05 (Miss. 1984)
- Stevens v. State, 867 So. 2d 219, 225-27 (Miss. 2003)
- Delo v. Lashley, 507 U.S. 272, 278 (1993)
- Chase v. State, 873 So. 2d 1013 (Miss. 2004)

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