

SUPREME COURT OF FLORIDA

Shere v. Moore

830 So. 2d 56 (Fla. 2002) · No. SC00-1960 · Decided September 12, 2002

SUMMARY

The Supreme Court of Florida denied Richard Earl Shere Jr.'s petition for habeas corpus relief challenging his death sentence. The court rejected claims of ineffective appellate counsel concerning prosecutorial religious references, the failure to raise proportionality and codefendant sentencing issues, and the failure to argue a mitigating circumstance, and held that a claim regarding incompetency at execution was not ripe. A partial dissent disagreed with the majority's treatment of the codefendant's life sentence and comparative culpability.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Shaw, J.; Wells, J.; Lewis, J.; Quince, J.; Harding, Senior Justice
JURISDICTION	Florida
DECIDED	September 12, 2002
DOCKET	SC00-1960
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for writ of habeas corpus alleging ineffective assistance of appellate counsel in a capital case and asserting that execution would violate the constitutional prohibition against cruel and unusual punishment because petitioner might be incompetent.
STANDARD OF REVIEW	Ineffective assistance of appellate counsel is evaluated under a standard paralleling Strickland: the petitioner must show specific errors or omissions falling outside professionally acceptable performance and prejudice sufficient to undermine confidence in the fairness and correctness of the appellate result. Capital sentences are independently reviewed for proportionality.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; majority opinion precedential, with a separate partial dissent.
PARTIES	Richard Earl Shere, Jr. v. Michael W. Moore, etc.

TOPICS

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QUESTIONS PRESENTED

1. Whether appellate counsel was ineffective for failing to challenge prosecutorial religious references and biblical arguments during the penalty phase.
2. Whether appellate counsel was ineffective for failing to challenge the proportionality of Shere's death sentence in light of codefendant Demo's life sentence.
3. Whether appellate counsel was ineffective for failing to challenge the trial court's refusal to find the statutory mitigating circumstance of no significant prior criminal history.
4. Whether Shere's potential incompetence at the time of execution presented a ripe claim for state habeas relief.

HOLDINGS

1. Appellate counsel was not ineffective for failing to raise the claim because the defense failed to object in many instances and itself introduced religious belief into the proceedings; the record did not establish deficient performance.
2. Appellate counsel was not ineffective because the trial court properly determined that Shere's admission of prior criminal behavior negated the mitigating circumstance.
3. The competency-to-be-executed claim was not ripe for state court proceedings.
4. Appellate counsel was not ineffective for failing to argue that Demo's life sentence rendered Shere's death sentence disproportionate because Demo had been convicted of second-degree murder, and the different convictions established that Demo was less culpable than Shere for purposes of the majority's relative-culpability analysis.
5. In conducting proportionality review, the court considers the totality of the circumstances and, when multiple defendants participated in the killing, may consider relative culpability; under the majority's rule, that relative-culpability comparison applies only when the codefendant was convicted of the same degree of murder and was otherwise legally eligible for death.

KEY QUOTATIONS

“The criteria for proving ineffective assistance of appellate counsel parallel the Strickland standard for ineffective trial counsel: Petitioner must show 1) specific errors or omissions which show that appellate counsel's performance deviated from the norm or fell outside the range of professionally acceptable performance and 2) the deficiency of that performance compromised the appellate process to such a degree as to undermine confidence in the fairness and correctness of the appellate result.” (at 60)

“Because Shere's codefendant was convicted of second-degree murder, his relative culpability for this murder has already been determined to be less than Shere's culpability.” (at 61)

“Defendants should not be treated differently upon the same or similar facts.” (at 65)

“Proportionality is an issue that should be raised in every death penalty case.” (at 67)

FACTUAL BACKGROUND

Shere and Bruce Demo were charged with murdering Drew Snyder after allegedly believing Snyder would inform police about their criminal activity. Shere was convicted of first-degree murder and sentenced to death, while Demo was tried separately, convicted of second-degree murder, and sentenced to life imprisonment. The evidence showed that both men participated in taking Snyder to an isolated location, shooting him with .22-caliber weapons, and concealing his body, although the evidence conflicted regarding who fired the initial and fatal shots.

PROCEDURAL HISTORY

Shere was convicted of first-degree murder in 1989 and sentenced to death after a seven-to-five jury recommendation. The Florida Supreme Court affirmed his conviction and sentence on direct appeal, later affirmed the denial of postconviction relief under Florida Rule of Criminal Procedure 3.850, and then considered this habeas petition alleging ineffective assistance of appellate counsel. The court denied habeas relief; the majority concluded that the omitted proportionality claim lacked prejudice because Shere's codefendant had been convicted of second-degree murder and was therefore less culpable as a matter of the verdict.

DISPOSITION

writ_denied

CASES CITED

- Shere v. State, 579 So. 2d 86 (Fla. 1991)
- Shere v. State, 742 So. 2d 215 (Fla. 1999)
- Johnson v. Wainwright, 463 So. 2d 207 (Fla. 1985)
- Wilson v. Wainwright, 474 So. 2d 1162 (Fla. 1985)
- Morton v. State, 789 So. 2d 324 (Fla. 2001)
- Clark v. State, 609 So. 2d 513 (Fla. 1992)
- State v. Dixon, 283 So. 2d 1 (Fla. 1973)
- Urbin v. State, 714 So. 2d 411 (Fla. 1998)
- Ray v. State, 755 So. 2d 604 (Fla. 2000)
- Jennings v. State, 718 So. 2d 144 (Fla. 1998)
- Steinhorst v. Singletary, 638 So. 2d 33 (Fla. 1994)
- Larzelere v. State, 676 So. 2d 394 (Fla. 1996)
- Rusaw v. State, 451 So. 2d 469 (Fla. 1984)

- State v. Boatwright, 559 So. 2d 210 (Fla. 1990)
- Rowe v. State, 417 So. 2d 981 (Fla. 1982)
- Porter v. State, 564 So. 2d 1060 (Fla. 1990)
- Robinson v. State, 761 So. 2d 269 (Fla. 1999)
- Slater v. State, 316 So. 2d 539 (Fla. 1975)
- Scott v. Dugger, 604 So. 2d 465 (Fla. 1992)
- Brookings v. State, 495 So. 2d 135 (Fla. 1986)
- Teffeteller v. Dugger, 734 So. 2d 1009 (Fla. 1999)
- Henyard v. State, 689 So. 2d 239 (Fla. 1996)

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