

SUPREME COURT OF WASHINGTON

In re the Personal Restraint of Stenson

142 Wn.2d 710 (2001) · Decided January 4, 2001

SUMMARY

The Washington Supreme Court considers Darold J. Stenson’s personal restraint petition challenging his convictions and death sentence for the aggravated murders of Denise Stenson and Frank Hoerner. Stenson alleged ineffective assistance of counsel, including an irreconcilable conflict with counsel, inadequate investigation and witness presentation, and deficiencies in the guilt and penalty phases. The court denied the petition, concluding that counsel’s performance was not constitutionally ineffective.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Guy, C.J.; Smith, J.; Johnson, J.; Madsen, J.; Alexander, J.; Talmadge, J.; Ireland, J.; Bridge, J.
JURISDICTION	Washington
DECIDED	January 4, 2001
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Darold J. Stenson filed a personal restraint petition challenging his convictions and death sentence on ineffective-assistance-of-counsel and related constitutional grounds after the Washington Supreme Court affirmed the convictions and sentence on direct appeal.
STANDARD OF REVIEW	A personal restraint petitioner may not relitigate an issue rejected on direct appeal absent an intervening change in law or other justification, and constitutional claims require a showing of actual and substantial prejudice. Ineffective assistance claims are evaluated under Strickland v. Washington: deficient performance and prejudice. Review of counsel's performance is highly deferential, with a strong presumption that challenged conduct falls within the wide range of reasonable professional assistance.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Washington.
PARTIES	Darold J. Stenson v. State of Washington

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

right to counsel

sentencing

PRACTICE AREAS

criminal procedure

post-conviction relief

constitutional law

capital sentencing

QUESTIONS PRESENTED

1. Whether an actual conflict of interest or irreconcilable conflict between Stenson and appointed counsel adversely affected counsel's performance.
2. Whether a criminal defendant has a Sixth Amendment right to control trial tactics and the theory of defense.
3. Whether counsel's opposition to Stenson's request for substitute counsel violated the Sixth Amendment.
4. Whether Stenson was denied counsel at a critical stage during the in camera substitution-of-counsel proceeding.
5. Whether counsel violated a fundamental duty by failing to timely move to withdraw.
6. Whether counsel was ineffective for declining to call witnesses during the guilt phase and for failing to present specified guilt- and penalty-phase evidence.
7. Whether counsel's failure to rebut evidence concerning Stenson's lack of grief and relationship with his wife constituted ineffective assistance.
8. Whether counsel was ineffective for failing to present evidence concerning the profitability of Dakota Farms.
9. Whether counsel was ineffective concerning the proposed lingering-doubt instruction.
10. Whether counsel's penalty-phase argument violated Stenson's Fifth Amendment privilege against self-incrimination.
11. Whether counsel was ineffective for failing to present other-suspect evidence.
12. Whether counsel was ineffective in preparing for evidence concerning Stenson's jeans and the blood-spatter evidence.
13. Whether counsel was ineffective in preparing for and examining medical examiner Dr. Brady.

HOLDINGS

1. Stenson failed to establish an irreconcilable attorney-client conflict that denied him effective assistance of counsel or justified presumed prejudice.
2. The Sixth Amendment does not give a defendant a constitutional right to control counsel's strategic and tactical decisions or to compel counsel to use the defendant's preferred theory of defense.
3. Stenson was not denied his Sixth Amendment right to counsel during the in camera proceeding on his request for substitute counsel.

4. A disagreement over trial strategy between appointed counsel and client does not, without more, violate the professional-conduct rule concerning conflicts of interest or require counsel's withdrawal.
5. Stenson failed to prove deficient performance and prejudice from counsel's decisions not to call particular witnesses or present additional evidence.
6. The Fifth Amendment privilege against compelled self-incrimination protects silence on the issue of guilt and does not apply to counsel's penalty-phase argument after guilt has been determined.
7. Counsel was not ineffective for declining to present evidence accusing Denise Hoerner because the proffered material was inadmissible or did not clearly point to another person as the perpetrator.

KEY QUOTATIONS

“A convicted defendant’s claim that counsel’s assistance was so defective as to require reversal of a conviction or death sentence has two components.” (at 720)

“appointed counsel, and not his client, is in charge of the choice of trial tactics and the theory of defense.” (at 734-35)

“Petitioner has been unable to show that the representation he received fell below the standard required by Strickland and cases from the Ninth Circuit Court of Appeals.” (at 757)

FACTUAL BACKGROUND

Stenson and his wife operated an exotic-bird business at Dakota Farms. Frank Hoerner, a business associate, was found shot to death inside the residence, and Denise Stenson was found suffering from a gunshot wound and died the next day. Physical and financial evidence connected Stenson to the killings, including blood evidence on his clothing, evidence that Hoerner had been beaten and moved, and proof of Stenson's financial difficulties. Stenson's appointed counsel pursued a defense strategy that emphasized penalty-phase mitigation rather than the trial strategy Stenson preferred, including blaming Hoerner's widow.

PROCEDURAL HISTORY

Stenson was convicted by a jury of two counts of premeditated first degree aggravated murder and sentenced to death. The Washington Supreme Court affirmed the convictions and sentence in *State v. Stenson*, 132 Wn.2d 668, 940 P.2d 1239 (1997), and the United States Supreme Court denied certiorari. Stenson then filed an initial and amended personal restraint petition; the Washington Supreme Court denied relief on all claims.

DISPOSITION

writ_denied

CASES CITED

- *State v. Stenson*, 132 Wn.2d 668, 940 P.2d 1239 (1997)
- *Stenson v. Washington*, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998)
- *Strickland v. Washington*, 466 U.S. 668 (1984)

- *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)
- *In re Personal Restraint of Lord*, 123 Wn.2d 296, 303, 316, 868 P.2d 835 (1994)
- *In re Personal Restraint of Taylor*, 105 Wn.2d 683, 688, 717 P.2d 755 (1986)
- *In re Personal Restraint of Gentry*, 137 Wn.2d 378, 388, 972 P.2d 1250 (1999)
- *In re Personal Restraint of Benn*, 134 Wn.2d 868, 905-06, 952 P.2d 116 (1998)
- *In re Personal Restraint of Cook*, 114 Wn.2d 802, 810, 812, 792 P.2d 506 (1990)
- *Sanders v. United States*, 373 U.S. 1, 16 (1963)
- *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980)
- *Mannhalt v. Reed*, 847 F.2d 576, 581 (9th Cir. 1988)
- *United States v. Moore*, 159 F.3d 1154, 1158-61 (9th Cir. 1998)
- *Brown v. Craven*, 424 F.2d 1166, 1169-70 (9th Cir. 1970)
- *Frazer v. United States*, 18 F.3d 778, 783, 785 (9th Cir. 1994)
- *Morris v. Slappy*, 461 U.S. 1, 3-4 (1983)
- *Wheat v. United States*, 486 U.S. 153, 159 (1988)
- *United States v. Williams*, 594 F.2d 1258, 1260-61 (9th Cir. 1979)
- *United States v. Price*, 474 F.2d 1223 (9th Cir. 1973)
- *Good v. United States*, 378 F.2d 934 (9th Cir. 1967)
- *United States v. Wadsworth*, 830 F.2d 1500, 1505, 1509-11 (9th Cir. 1987)
- *United States v. Castro*, 972 F.2d 1107 (9th Cir. 1992)
- *State v. Piche*, 71 Wn.2d 583, 589-90, 430 P.2d 522 (1967)
- *State v. Keller*, 65 Wn.2d 907, 908, 400 P.2d 370 (1965)
- *Jones v. Barnes*, 463 U.S. 745, 751, 754 (1983)
- *Taylor v. Illinois*, 484 U.S. 400, 417-18 (1988)
- *Kwan Fai Mak v. Blodgett*, 970 F.2d 614, 617-22 (9th Cir. 1992)
- *Babbitt v. Calderon*, 151 F.3d 1170, 1175-76 (9th Cir. 1998)
- *McGautha v. California*, 402 U.S. 183, 211, 213, 220 (1971)
- *Crampton v. Ohio*, 402 U.S. 183 (1971)
- *United States v. Crosby*, 75 F.3d 1343, 1347 (9th Cir. 1996)
- *United States v. Armstrong*, 621 F.2d 951, 953 (9th Cir. 1980)
- *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)
- *Anders v. California*, 386 U.S. 738 (1967)
- *Henry v. Mississippi*, 379 U.S. 443, 451 (1965)