

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Joseph Flores v. Lorie Davis, Director

No. 16-20672, United States Court of Appeals for the Fifth Circuit (August 9, 2018)

SUMMARY

Fifth Circuit affirmed denial of § 2254 habeas relief, holding that trial counsel was not ineffective for failing to strike a venireman who stated his past crime victim experience "would affect [his] ability to be fair." The ambiguous voir dire response did not demonstrate actual bias, and the state court's implicit finding of no bias was entitled to AEDPA deference. Flores failed to rebut that finding with clear and convincing evidence, so the Strickland claim failed.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Jolly; Smith; Costa
JURISDICTION	Federal
DECIDED	August 9, 2018
DOCKET	16-20672
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's summary judgment dismissal of a 28 U.S.C. § 2254 application.
STANDARD OF REVIEW	Under AEDPA, a federal court may not grant habeas corpus relief unless the state court decision was contrary to or an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts. The district court's decision is reviewed under the same standard as the state court's decision.
PRECEDENTIAL VALUE	unpublished
PARTIES	Joseph Lee Flores v. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division

TOPICS

- habeas corpus
- ineffective assistance
- sixth amendment
- standard of review
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to challenge or strike Venireman #38 for alleged bias.

HOLDINGS

1. The state court's decision denying Flores's ineffective assistance claim was not contrary to or an unreasonable application of clearly established federal law. The juror's ambiguous statement did not demonstrate actual bias, and Flores failed to rebut the presumption of correctness with clear and convincing evidence.

KEY QUOTATIONS

“th[ought] his past experience as a crime victim ‘would affect [his] ability to be fair’” (at 3)

“unequivocally expressed that they could not sit as fair and impartial jurors” (at 3)

FACTUAL BACKGROUND

Flores, a Texas prisoner, was convicted of aggravated robbery and attempted capital murder of a peace officer. During voir dire, Venireman #38 stated that he thought his past experience as a crime victim 'would affect his ability to be fair.' Trial counsel did not challenge or strike this juror. The state habeas court denied Flores's ineffective assistance claim, implicitly finding no bias.

PROCEDURAL HISTORY

Flores appealed the district court's summary judgment dismissal of his habeas corpus application challenging his 2008 convictions for aggravated robbery and attempted capital murder of a peace officer. The Fifth Circuit granted a certificate of appealability on the issue of ineffective assistance of counsel for failing to strike a biased juror.

DISPOSITION

affirmed

CASES CITED

- Martinez v. Johnson, 255 F.3d 229, 237 (5th Cir. 2001)
- Harrington v. Richter, 562 U.S. 86, 100-03 (2011)
- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- Virgil v. Dretke, 446 F.3d 598, 605, 608-10, 613 (5th Cir. 2006)
- Patton v. Yount, 467 U.S. 1025, 1035-36 (1984)

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