

SUPREME COURT OF IDAHO

Pizzuto v. State, 146 Idaho 720

202 P.3d 642 (2008) · No. No. 32679 · Decided February 22, 2008

SUMMARY

The Supreme Court of Idaho affirmed the dismissal of Gerald Ross Pizzuto Jr.'s fifth petition for post-conviction relief challenging his death sentence under *Atkins v. Virginia*. The court held that the petition was timely for purposes of the appeal but that Pizzuto failed to present a prima facie case of intellectual disability because the record did not establish an IQ of 70 or below before age eighteen. The court also upheld the denial of judicial disqualification motions and rejected the remaining claims presented.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Chief Justice; Burdick; W. Jones; Trout; Judd; Eismann
JURISDICTION	Idaho
DECIDED	February 22, 2008
DOCKET	No. 32679
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal on summary judgment of Pizzuto's fifth petition for post-conviction relief challenging his death sentence under <i>Atkins v. Virginia</i> .
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard whether granted to the moving or nonmoving party. A post-conviction applicant must present evidence establishing a prima facie case on each element of a claim. Alleged abuse of discretion in denying further testing is reviewed under whether the trial court correctly perceived the issue as discretionary, acted within the applicable legal standards and boundaries, and exercised reason.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gerald Ross Pizzuto, Jr. v. State of Idaho

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QUESTIONS PRESENTED

1. Whether the assigned district judge was subject to disqualification without cause under Idaho Rule of Civil Procedure 40(d)(1).
2. Whether the district judge was required to disqualify himself for cause based on alleged prior bias or factual findings.
3. Whether Pizzuto's successive Atkins-based petition was untimely under Idaho Code section 19-2719.
4. Whether Pizzuto presented a genuine issue of material fact establishing a prima facie case under Idaho Code section 19-2515A.
5. Whether the district court erred by dismissing the petition without ordering additional mental-health testing.
6. Whether the failure to hold an evidentiary hearing denied equal protection.
7. Whether Idaho Code section 19-2515A violated the Eighth and Fourteenth Amendments.

HOLDINGS

1. A successive petition must generally be filed within forty-two days after the petitioner knew or reasonably should have known of the claim, unless extraordinary circumstances prevented filing within that period; even then, the petition must be filed within a reasonable time after the claim became known or knowable. Because the court had not previously clarified this rule and the district court applied an incorrect trigger date, Pizzuto's petition was treated as timely in this case.
2. To avoid summary dismissal of an Atkins-based post-conviction claim, the applicant must present evidence creating a genuine issue of material fact on each statutory element: an IQ of 70 or below, significant limitations in adaptive functioning in at least two specified areas, and onset of both conditions before age eighteen. Pizzuto failed to make that showing.
3. A district court may grant summary judgment to a nonmoving party when the issue was presented by the opposing party's motion and the applicable summary-judgment standard is satisfied.
4. Idaho Rule of Civil Procedure 40(d)(1)(I)(ii) bars a party from disqualifying without cause the judge who entered the conviction or sentence being challenged in a post-conviction proceeding.
5. The district judge did not err in refusing disqualification for cause where the asserted bias was based on prior judicial findings and previously known allegations that were not timely or properly presented as grounds for disqualification.

KEY QUOTATIONS

“After considering these arguments, we hold that a reasonable time for filing a successive petition for post-conviction relief is forty-two days after the petitioner knew or reasonably should have known of the claim, unless the petitioner shows that there were extraordinary circumstances that prevented him or her from filing the claim within that time period.” (648)

“Thus, Pizzuto had the burden of presenting evidence on each element of his claim under Idaho Code § 19-2515A(1).” (650-651)

“Pizzuto had the burden of showing that at the time of his murders he was mentally retarded as defined in Idaho Code § 19-2515A(1)(a) and that his mental retardation occurred prior to his eighteenth birthday.” (655)

FACTUAL BACKGROUND

Pizzuto murdered Berta Herndon and Del Herndon in 1985 and received death sentences for the murders. He later filed a fifth post-conviction petition claiming that he was mentally retarded and therefore exempt from execution under Atkins. The record contained a 1985 verbal IQ score of 72, later opinions concerning neurological impairment and substance abuse, and an affidavit suggesting possible mild mental retardation, but no expert opinion establishing an IQ of 70 or below before age eighteen or at the time of the murders.

PROCEDURAL HISTORY

Pizzuto was convicted of two first-degree murders and sentenced to death in 1986. After four prior post-conviction proceedings, he filed a fifth petition alleging that he was mentally retarded and therefore could not be executed under Atkins v. Virginia. The district court dismissed the petition as untimely and alternatively concluded that Pizzuto had not presented evidence creating a genuine issue of material fact concerning the statutory elements of mental retardation. The Idaho Supreme Court held that the petition should be treated as timely but affirmed the dismissal because the evidentiary showing was insufficient and the remaining appellate claims were waived or unpreserved.

DISPOSITION

affirmed

CASES CITED

- State v. Pizzuto, 119 Idaho 742, 810 P.2d 680 (1991)
- Pizzuto v. State, 127 Idaho 469, 903 P.2d 58 (1995)
- Pizzuto v. State, 134 Idaho 793, 10 P.3d 742 (2000)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Atkins v. Virginia, 536 U.S. 304 (2002)
- McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 135 P.3d 756 (2006)
- Hogg v. Wolske, 142 Idaho 549, 130 P.3d 1087 (2006)
- Penry v. Lynaugh, 492 U.S. 302 (1989)

- Ford v. Wainwright, 477 U.S. 399 (1986)
- Dunlap v. State, 131 Idaho 576, 961 P.2d 1179 (1998)
- Rhoades v. State, 135 Idaho 299, 17 P.3d 243 (2000)
- Harwood v. Talbert, 136 Idaho 672, 39 P.3d 612 (2001)
- Shawver v. Huckleberry Estates, L.L.C., 140 Idaho 354, 93 P.3d 685 (2004)
- State v. Lovelace, 140 Idaho 53, 90 P.3d 278 (2003)
- Raudebaugh v. State, 135 Idaho 602, 21 P.3d 924 (2001)
- Sprinkler Irr. Co., Inc. v. John Deere Ins. Co., Inc., 139 Idaho 691, 85 P.3d 667 (2004)
- Hudelson v. Delta Int'l Machinery Corp., 142 Idaho 244, 127 P.3d 147 (2005)
- Row v. State, 135 Idaho 573, 21 P.3d 895 (2001)
- Schriro v. Smith, 546 U.S. 6 (2005)
- Dusky v. United States, 362 U.S. 402 (1960)

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