

SUPREME COURT OF KENTUCKY

Thomas C. Bowling v. Commonwealth of Kentucky

2005-SC-0712-MR · No. 2005-SC-0712-MR · Decided June 15, 2006

SUMMARY

The Kentucky Supreme Court affirmed the Fayette Circuit Court’s denial of Thomas C. Bowling’s motions under CR 60.02 and CR 60.03. The court held that *Roper v. Simmons* prohibits execution based on chronological age below eighteen at the time of the offense, not on an asserted juvenile mental age, and found no basis for a new sentencing hearing. The court further concluded that Bowling’s claim would be procedurally defaulted even if such a mental-age theory were legally viable.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Johnstone; Lambert, C.J.; Cooper, J.; Graves, J.; Scott, J.; Wintersheimer, J.
JURISDICTION	Kentucky
DECIDED	June 15, 2006
DOCKET	2005-SC-0712-MR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bowling appealed as a matter of right from the Fayette Circuit Court's denial of his motions under Kentucky Rules of Civil Procedure 60.02 and 60.03 seeking to vacate his death sentences or obtain a new sentencing hearing based on <i>Roper v. Simmons</i> and a claimed juvenile mental age.
STANDARD OF REVIEW	The opinion does not state a separately labeled standard of review; it reviews the Fayette Circuit Court's denial of CR 60.02 and CR 60.03 relief and addresses the legal interpretation of <i>Roper de novo</i> .
PRECEDENTIAL VALUE	Published and designated to be published; precedential Kentucky Supreme Court opinion.
PARTIES	Thomas C. Bowling v. Commonwealth of Kentucky

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QUESTIONS PRESENTED

1. Whether *Roper v. Simmons* prohibits execution of an offender whose mental functioning is allegedly below the level of an average eighteen-year-old, even though the offender was at least eighteen chronologically when the offense was committed.
2. Whether Bowling's juvenile mental-age claim was procedurally defaulted because Kentucky law already prohibited execution of certain juvenile offenders when he was tried and the claim could have been raised earlier.
3. Whether *Roper* entitled Bowling to a new capital sentencing hearing so that a jury could reconsider the mitigating value of his alleged juvenile mental age.

HOLDINGS

1. *Roper v. Simmons* prohibits execution based on the offender's chronological age at the time of the offense and does not prohibit execution solely because an adult offender allegedly functions at a juvenile mental age.
2. Even assuming a juvenile mental-age theory could support an Eighth Amendment claim, Bowling procedurally defaulted it because Kentucky had already enacted a statute barring capital punishment for qualifying offenders under sixteen and the claim could have been asserted at trial or in earlier collateral proceedings.
3. Bowling was not entitled to a new sentencing hearing because Kentucky already permitted the same youth-related mitigating arguments at the time of his 1990 trial, and *Roper* did not create a new sentencing right based on juvenile mental age.

KEY QUOTATIONS

"Thus, we conclude that Roper v. Simmons only prohibits the execution of those offenders whose chronological age was below eighteen at the time of the commission of the offense."

"Accordingly, the order of the Fayette Circuit Court denying Bowling relief under CR 60.02 and CR 60.03 is affirmed."

FACTUAL BACKGROUND

Bowling was convicted in 1990 of murdering Edward and Ernestine Earley and assaulting their two-year-old child, receiving two death sentences. He claimed that although he was chronologically an adult at the time of the offenses, he mentally functioned at the level of an eleven-year-old child. He relied on school records and

affidavits and argued that Roper's Eighth Amendment rule barring execution of offenders who were under eighteen at the time of the offense should extend to offenders with a juvenile mental age.

PROCEDURAL HISTORY

Bowling was convicted of two murders and sentenced to death in the Fayette Circuit Court in 1990. His convictions and sentences were affirmed on direct appeal, his state post-conviction relief was denied, and his federal habeas petition and related proceedings were unsuccessful. After Roper was decided, he filed another CR 60.02/CR 60.03 motion asserting that his mental functioning was equivalent to that of an eleven-year-old and separately sought a new sentencing hearing; the trial court denied relief, and the Kentucky Supreme Court affirmed. The court also denied as moot Bowling's motion to strike documents from the appellate record.

DISPOSITION

affirmed

CASES CITED

- Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)
- Bowling v. Commonwealth, 873 S.W.2d 175 (Ky. 1993)
- Bowling v. Commonwealth, 981 S.W.2d 545 (Ky. 1998)
- Bowling v. Commonwealth, 163 S.W.3d 361 (Ky. 2005)
- Bowling v. Parker, 138 F. Supp. 2d 821 (E.D. Ky. 2001)
- Bowling v. Parker, 344 F.3d 487 (6th Cir. 2003)
- In re Bowling, 422 F.3d 434 (6th Cir. 2005)
- Atkins v. Virginia, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)
- Winston v. Commonwealth, 268 Va. 564, 604 S.E.2d 21 (2004)
- Head v. Hill, 277 Ga. 255, 587 S.E.2d 613 (2003)
- Rogers v. State, 276 Ga. 67, 575 S.E.2d 879 (2003)
- Skaggs v. Commonwealth, 803 S.W.2d 573 (Ky. 1990)
- Hill v. State, 921 So. 2d 579 (Fla. 2006)
- Thompson v. Oklahoma, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988)
- Stanford v. Kentucky, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989)
- Eddings v. Oklahoma, 455 U.S. 104, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)
- Johnson v. Texas, 509 U.S. 350, 113 S. Ct. 2658
- Penry v. Lynaugh, 492 U.S. 302, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989)
- In re Ramon M., 22 Cal. 3d 419, 149 Cal. Rptr. 387, 584 P.2d 524 (1978)
- State v. Schilling, 95 N.J.L. 145, 112 A. 400 (1920)
- People v. Marguls, 344 Ill. 261, 176 N.E. 314 (1931)
- Chriswell v. State, 171 Ark. 255, 283 S.W. 981 (1926)

- Pickett v. State, 37 Ala. App. 410, 71 So. 2d 102 (1954)
- Skaggs v. Parker, 235 F.3d 261 (6th Cir. 2000)

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