

SUPREME COURT OF ALABAMA

Ex parte Gavin

891 So. 2d 998 (Ala. 2004) · No. 1030368 · Decided May 28, 2004

SUMMARY

The Alabama Supreme Court denied Keith Edmund Gavin's petition for a writ of certiorari without an opinion in a capital murder case. Justice Johnstone dissented, arguing that the court should conduct plain-error review of the admission during sentencing of an Illinois prosecutor's "Official Statement of Facts" concerning Gavin's prior murder conviction. The dissent questioned whether the document bore sufficient indicia of reliability and whether its admission violated due process.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Per curiam; Houston; Lyons; Brown; Harwood; Woodall; Stuart; Johnstone
JURISDICTION	Alabama
DECIDED	May 28, 2004
DOCKET	1030368
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for a writ of certiorari seeking review of the Alabama Court of Criminal Appeals' decision in Gavin v. State; the Supreme Court of Alabama denied the writ without opinion.
STANDARD OF REVIEW	The dissent proposed plain-error review under Rule 39(a)(2)(D), Ala. R. App. P.; the majority issued no opinion.
PRECEDENTIAL VALUE	Published disposition denying certiorari without opinion; the dissent is nonprecedential as to its proposed reliability and plain-error analysis.
PARTIES	Keith Edmund Gavin v. State of Alabama

TOPICS

- sentencing
- hearsay
- criminal procedure
- appellate procedure
- sixth amendment

PRACTICE AREAS

- criminal procedure
- evidence
- capital sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Alabama should grant certiorari and conduct plain-error review of the admission of the Illinois prosecutor's Official Statement of Facts during the sentencing phase.
2. Whether the document bore sufficient indicia of reliability to be admissible hearsay in a sentencing hearing.

KEY QUOTATIONS

"WRIT DENIED. NO OPINION." (998)

"During the sentencing phase of the trial, the trial court, over the defendant's objection, admitted a document entitled 'Official Statement of Facts', purportedly signed by an assistant state attorney in Illinois." (999)

"The admission of this document virtually assured a death recommendation by the jury, and the opinion of the Court of Criminal Appeals does not reveal any legitimate basis in the record for holding the document sufficiently reliable to be admissible." (1000)

"Accordingly, I respectfully submit that, pursuant to Rule 39(a)(2)(D), Ala. R.App. P., we should conduct a plain error review of the record to determine whether it contains any legitimate basis for the holding by the Court of Criminal Appeals that the document was sufficiently reliable to be admissible." (1001)

FACTUAL BACKGROUND

During the sentencing phase of Gavin's capital-murder trial, the trial court admitted an "Official Statement of Facts" purportedly signed by an assistant state attorney in Illinois. The document summarized the circumstances of Gavin's prior Illinois murder conviction, including that he forced the victim from a party at gunpoint, led the victim to a secluded area, and shot the victim between the eyes. The Illinois prosecutor did not testify or appear at trial, and the document's admission was challenged as hearsay and more prejudicial than probative.

PROCEDURAL HISTORY

During the sentencing phase of Gavin's capital-murder trial, the trial court admitted an Illinois prosecutor's document summarizing the facts of Gavin's prior Illinois murder conviction. The Alabama Court of Criminal Appeals held that the document was hearsay but sufficiently reliable for admission at sentencing and that its admission did not violate Gavin's confrontation rights. Gavin petitioned the Supreme Court of Alabama for a writ of certiorari, which was denied; Justice Johnstone dissented and would have conducted plain-error review.

DISPOSITION

writ_denied

CASES CITED

- Gavin v. State, 891 So. 2d 907 (Ala. Crim. App. 2003)
- Ex parte McGahee, 632 So. 2d 981, 983 (Ala. 1993)
- Kuenzel v. State, 577 So. 2d 474, 528 (Ala. Crim. App. 1990)

- Dennis v. O'Malley, 256 Ill. App. 3d 334, 628 N.E.2d 362, 194 Ill. Dec. 865 (1993)
- People v. Wooten, 392 Ill. 542, 64 N.E.2d 857 (1946)
- People v. Hawkins, 54 Ill. 2d 247, 296 N.E.2d 725 (1973)

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