

SUPREME COURT OF FLORIDA

Ponticelli v. State

941 So. 2d 1073 (Fla. 2006) · No. SC03-17, SC03-1858 · Decided August 31, 2006

SUMMARY

The Supreme Court of Florida affirmed the denial of Anthony Ponticelli's motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 and denied his petition for a writ of habeas corpus. The opinion addressed, among other issues, alleged Brady and Giglio violations involving undisclosed evidence, witness benefits, and allegedly false or misleading testimony.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Per Curiam; Lewis, C.J.; Wells, J.; Pariente, J.; Quince, J.; Cantero, J.; Bell, J.; Anstead, J.                                                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | August 31, 2006                                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | SC03-17, SC03-1858                                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Ponticelli appealed the circuit court's denial of his fifth amended motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 and separately petitioned the Supreme Court of Florida for a writ of habeas corpus. The court affirmed the denial of postconviction relief and denied the habeas petition.                                                                                      |
| STANDARD OF REVIEW    | For Brady, Giglio, and ineffective-assistance claims following an evidentiary hearing, the court deferred to the trial court's factual findings, including credibility determinations, but reviewed the legal conclusions and whether the facts established the required elements de novo. Summary denial was upheld when claims were facially invalid, procedurally barred, or conclusively refuted by the record. |
| PRECEDENTIAL VALUE    | Published opinion; precedential decision of the Supreme Court of Florida.                                                                                                                                                                                                                                                                                                                                           |
| PARTIES               | Anthony John Ponticelli v. State of Florida                                                                                                                                                                                                                                                                                                                                                                         |

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

habeas corpus

sentencing

## PRACTICE AREAS

state post-conviction relief

capital punishment

criminal procedure

constitutional law

ineffective assistance of counsel

## QUESTIONS PRESENTED

1. Whether the State violated Brady by suppressing evidence concerning an alleged benefit to witness Dennis Freeman, Timothy Keesee's observations of cocaine use, and a cocaine party involving Ponticelli.
2. Whether the State violated Giglio by presenting or failing to correct allegedly false testimony concerning Freeman's benefits, Keesee's observations, and the date Brian Burgess and Edward Brown first met Ponticelli.
3. Whether trial counsel rendered ineffective assistance during the penalty phase by inadequately investigating and presenting mitigating and mental-health evidence.
4. Whether trial counsel rendered ineffective assistance during the pretrial and guilt phases by inadequately investigating competency, presenting allegedly inconsistent defenses, vouching for witnesses, failing to object to witness sequestration, and failing to object to prosecutorial comments or evidence.
5. Whether Ponticelli was denied competent mental-health assistance and whether the trial court improperly summarily denied additional postconviction claims.
6. Whether Florida's capital-sentencing procedure and Ponticelli's sentences were unconstitutional under *Ring v. Arizona*.
7. Whether appellate counsel was ineffective for failing to raise challenges to the sufficiency of the evidence, prosecutorial misconduct, and allegedly false evidence.

## HOLDINGS

1. Ponticelli failed to establish a Brady violation because the challenged evidence either was not clearly favorable or suppressed, or was not material; there was no reasonable probability that disclosure would have changed the verdict or undermined confidence in the outcome.
2. Ponticelli failed to establish that the State knowingly presented or failed to correct material false testimony, and the challenged testimony concerning Freeman, Keesee, Brown, and Burgess did not warrant relief.
3. Counsel's investigation and presentation of penalty-phase mitigation were deficient, but Ponticelli failed to establish prejudice; therefore, the denial of penalty-phase ineffective-assistance relief was affirmed.
4. Ponticelli failed to establish deficient performance and prejudice under Strickland for his claims concerning competency investigation, alternative defenses, witness credibility, sequestration, and objections to prosecutorial comments or evidence.

5. The claim that Ponticelli was denied competent mental-health assistance was procedurally barred because competency and related claims had been raised and rejected on direct appeal; the claim also lacked merit on the record.
6. The trial court properly summarily denied claims that were procedurally barred or facially insufficient.
7. Ring v. Arizona does not apply retroactively to Ponticelli's final convictions and sentences, and his related indictment and sentencing challenges were without merit.
8. Appellate counsel was not ineffective for failing to raise challenges to the sufficiency of the evidence, alleged prosecutorial misconduct, or allegedly false evidence.

#### KEY QUOTATIONS

*"A true Brady violation requires that the defendant establish the following three elements: "(1) that the evidence at issue is favorable to him, either because it is exculpatory or because it is impeaching; (2) that the evidence was suppressed by the State, either willfully or inadvertently; and (3) that the suppression resulted in prejudice." (1084)*

*"To establish a Giglio claim, it must be shown that (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material." (1088)*

*"An attorney has a duty to conduct a reasonable investigation for possible mitigating evidence." (1095)*

*"To uphold the trial court's summary denial of claims raised in a 3.850 motion, the claims must be either facially invalid or conclusively refuted by the record." (1105)*

#### FACTUAL BACKGROUND

Ponticelli was convicted of murdering Nicholas and Ralph Grandinetti, whom he shot in the head after arranging to sell their cocaine and then attempting to conceal the crimes. The prosecution presented testimony from multiple witnesses that Ponticelli announced his intent to kill the brothers, later confessed, and sought assistance in disposing of evidence. Ponticelli's postconviction claims centered on alleged suppression of evidence and false testimony concerning his cocaine use, counsel's investigation and presentation of mitigation, his competency, and the constitutionality of Florida's capital-sentencing procedure.

#### PROCEDURAL HISTORY

Ponticelli was convicted of two counts of first-degree murder and sentenced to death in 1988. The Supreme Court of Florida affirmed on direct appeal; the United States Supreme Court vacated and remanded for reconsideration in light of Espinosa, after which the Florida court again denied relief based on waiver. Ponticelli later filed successive postconviction motions, leading to evidentiary hearings and circuit-court orders denying his Brady, Giglio, ineffective-assistance, competency, and sentencing claims. The Supreme Court of Florida affirmed those orders and denied habeas relief.

#### DISPOSITION

affirmed

## CASES CITED

- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- Giglio v. United States, 405 U.S. 150, 153-54 (1972)
- Strickler v. Greene, 527 U.S. 263, 281 n.20, 289-90 (1999)
- State v. Lewis, 838 So. 2d 1102, 1116 (Fla. 2002)
- Mordenti v. State, 894 So. 2d 161, 170-71 (Fla. 2004)
- Guzman v. State, 868 So. 2d 498, 506-08 (Fla. 2003)
- Knight v. State, 923 So. 2d 387, 406 (Fla. 2005)
- State v. DiGuilio, 491 So. 2d 1129, 1138 (Fla. 1986)
- Suggs v. State, 923 So. 2d 419, 426, 429, 435 (Fla. 2005)
- Strickland v. Washington, 466 U.S. 668, 687-95 (1984)
- Wiggins v. Smith, 539 U.S. 510, 521, 527 (2003)
- Sochor v. State, 883 So. 2d 766, 771-85 (Fla. 2004)
- Jones v. State, 855 So. 2d 611, 618 (Fla. 2003)
- Ferrell v. State, 918 So. 2d 163, 170, 172-73 (Fla. 2005)
- Arbelaez v. State, 898 So. 2d 25, 32, 34-35 (Fla. 2005)
- Rose v. State, 675 So. 2d 567, 573 (Fla. 1996)
- State v. Riechmann, 777 So. 2d 342, 350 (Fla. 2000)
- Larkins v. State, 739 So. 2d 90, 95 (Fla. 1999)
- Holland v. State, 916 So. 2d 750, 757 (Fla. 2005)
- Gorby v. State, 819 So. 2d 664, 675 (Fla. 2002)
- Walls v. State, 926 So. 2d 1156, 1170 (Fla. 2006)
- Rivera v. State, 859 So. 2d 495, 504 (Fla. 2003)
- Brown v. State, 846 So. 2d 1114, 1125 (Fla. 2003)
- Brown v. State, 894 So. 2d 137, 146 (Fla. 2004)
- Cherry v. State, 781 So. 2d 1040, 1050 (Fla. 2000)
- Waterhouse v. State, 792 So. 2d 1176, 1181 n.10 (Fla. 2001)
- Randolph v. State, 463 So. 2d 186, 191-92 (Fla. 1984)
- Ake v. Oklahoma, 470 U.S. 68, 83 (1985)
- Correll v. Dugger, 558 So. 2d 422, 426 (Fla. 1990)
- Peede v. State, Peede v. State, 748 So. 2d 253, 257 (Fla. 1999)
- Bruno v. State, 807 So. 2d 55, 63 (Fla. 2001)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Schriro v. Summerlin, 542 U.S. 348, 358 (2004)
- Ponticelli v. State, 593 So. 2d 483 (Fla. 1991)
- Ponticelli v. State, 618 So. 2d 154 (Fla. 1993)

