

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Abdul-Salaam

571 Pa. 219 (2002) (Pa. 2002) · Decided December 13, 2002

SUMMARY

The Supreme Court of Pennsylvania denied Seifullah Abdul-Salaam's emergency motion for a stay of execution and request for an expedited briefing schedule. The court held that the PCRA exception for newly recognized constitutional rights requires a retroactivity determination to have been made before the petition was filed, and concluded that Abdul-Salaam had not satisfied the applicable jurisdictional requirements or established grounds for a stay.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Cappy; Chief Justice Zappala; Justice Castille; Justice Nigro; Justice Newman; Justice Saylor
JURISDICTION	Pennsylvania
DECIDED	December 13, 2002
DISPOSITION	denied
PROCEDURAL POSTURE	The capital petitioner sought a stay of execution and an expedited briefing schedule while a second PCRA petition was pending. The Supreme Court of Pennsylvania considered whether it had jurisdiction to entertain the petitioner's asserted constitutional claim under the PCRA's exception for a newly recognized constitutional right held retroactive.
STANDARD OF REVIEW	The court construed the PCRA statutory language de novo and treated the PCRA time limitation as jurisdictional. It assessed entitlement to a stay under the statutory requirement that the petitioner show a qualifying, pending post-conviction petition and a strong likelihood of success on the merits.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Seifullah Abdul-Salaam v. Commonwealth of Pennsylvania

TOPICS

- state post-conviction relief
- successive petitions
- sentencing
- statutory interpretation
- appellate procedure

PRACTICE AREAS

Pennsylvania post-conviction relief

capital punishment

criminal procedure

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether 42 Pa.C.S. § 9545(b)(1)(iii)'s requirement that a new constitutional right 'has been held' retroactive requires a retroactivity determination before the petitioner files the PCRA petition.
2. Whether the petitioner was entitled to a stay of execution under 42 Pa.C.S. § 9545(c).
3. Whether the petitioner's Brady, procedural due process, fingerprint-evidence, and alleged new mitigating-evidence claims established entitlement to a stay or expedited briefing.

HOLDINGS

1. The PCRA's newly recognized constitutional-right exception applies only when the Supreme Court that recognized the right had already held the right retroactive to cases on collateral review before the petitioner filed the PCRA petition.
2. The petitioner did not satisfy § 9545(b)(1)(iii) because the United States Supreme Court had not held *Apprendi* or *Ring* retroactive to cases on collateral review when the second petition was filed.
3. A stay of execution requires a pending post-conviction petition that satisfies the PCRA and a strong showing of likelihood of success on the merits; a petition that is jurisdictionally untimely does not satisfy that requirement.
4. The petitioner's Brady, procedural-rule, fingerprint-evidence, and speculative brain-imaging claims did not establish a likelihood of success or otherwise justify a stay or expedited briefing.

KEY QUOTATIONS

"The language 'has been held' is in the past tense. These words mean that the action has already occurred, i.e., 'that court' has already held the new constitutional right to be retroactive to cases on collateral review." (812 A.2d at 501)

"We are persuaded that the language 'has been held' in 42 Pa.C.S. § 9545(b)(1)(iii) means that a retroactivity determination must exist at the time that the petition is filed." (812 A.2d at 502)

FACTUAL BACKGROUND

Abdul-Salaam was convicted of first-degree murder for shooting a police officer and received a death sentence. At least four eyewitnesses identified him as the shooter, and the PCRA court previously conducted extensive hearings concerning alleged organic brain damage. While a governor's execution warrant was outstanding and his execution was scheduled for December 12, 2002, Abdul-Salaam sought a stay based on *Apprendi* and *Ring*, alleged Brady material, challenges to fingerprint evidence, and speculative new mitigating evidence concerning brain abnormalities.

PROCEDURAL HISTORY

Abdul-Salaam was convicted of first-degree murder and sentenced to death in 1995. The Supreme Court of Pennsylvania affirmed the judgment of sentence in 1996 and later affirmed the denial of his first PCRA petition in 2001; reconsideration was denied in 2002. After filing a second petition, Abdul-Salaam sought a stay shortly before his scheduled execution, asserting claims based on Apprendi, Ring, alleged Brady violations, fingerprint evidence, and possible brain abnormalities. The court denied the stay and expedited briefing because the second petition did not satisfy the PCRA jurisdictional requirements and the other claims did not establish entitlement to relief.

DISPOSITION

denied

CASES CITED

- Commonwealth v. Abdul-Salaam, 544 Pa. 514, 678 A.2d 342 (1996)
- Commonwealth v. Abdul-Salaam, ___ Pa. ___, 808 A.2d 558 (2001)
- Commonwealth v. Pursell, 561 Pa. 214, 749 A.2d 911 (2000)
- Commonwealth v. Peterkin, 554 Pa. 547, 722 A.2d 638 (1998)
- Commonwealth v. Fahy, 558 Pa. 313, 737 A.2d 214 (1999)
- Commonwealth v. MacPherson, 561 Pa. 571, 752 A.2d 384 (2000)
- Commonwealth v. Lantzy, 558 Pa. 214, 736 A.2d 564 (1999)
- Tyler v. Cain, 533 U.S. 656 (2001)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Brady v. Maryland, 373 U.S. 83 (1963)
- Commonwealth v. Albrecht, 554 Pa. 31, 720 A.2d 693 (1998)
- Commonwealth v. Bracey, 568 Pa. 264, 795 A.2d 935 (2001)
- Commonwealth v. Pursell, 555 Pa. 233, 724 A.2d 293 (1999)
- Commonwealth v. Scott, 561 Pa. 617, 752 A.2d 871 (2000)