

SUPREME COURT OF MISSOURI, EN BANC

Mallett v. State

769 S.W.2d 77 (Mo. banc 1989) · No. No. 70923 · Decided April 18, 1989

SUMMARY

The Supreme Court of Missouri reversed an order vacating Jerome Mallett’s death sentence in a Rule 27.26 post-conviction proceeding. The court held that the transfer of venue to Schuyler County did not violate due process or equal protection, and that counsel’s failure to object to a misnumbered mitigating-circumstances instruction did not establish ineffective assistance. The court also rejected Mallett’s cross-appeal claims concerning judicial recusal, venue, the “depravity of mind” aggravating circumstance, and ineffective appellate counsel.

CASE DETAILS

COURT	Supreme Court of Missouri, En Banc
WRITING FOR THE COURT	Rendlen, Judge; Billings, C.J.; Blackmar, J.; Covington, J.; Higgins, J.; Maus, Special Judge; Rendlen, J.; Robertson, J.; Welliver, J.
JURISDICTION	Missouri
DECIDED	April 18, 1989
DOCKET	No. 70923
DISPOSITION	reversed
PROCEDURAL POSTURE	The State appealed from a Rule 27.26 post-conviction order vacating Mallett's death sentence and requiring a new trial in a venue where Black jurors might be available. Mallett cross-appealed the denial of relief on additional claims. The Missouri Court of Appeals, Western District, transferred the appeal to the Supreme Court of Missouri before opinion because the underlying conviction involved the death penalty.
STANDARD OF REVIEW	Findings, conclusions, and judgment in a Rule 27.26 proceeding are reviewed for clear error.
PRECEDENTIAL VALUE	published en banc Missouri Supreme Court opinion
PARTIES	State of Missouri v. Jerome Mallett

TOPICS

state post-conviction relief

ineffective assistance

sentencing

due process

equal protection

PRACTICE AREAS

criminal post-conviction relief

capital sentencing

criminal procedure

constitutional law

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the transfer of venue to Schuyler County denied Mallett due process because the county had virtually no Black residents and the trial therefore presented a substantial risk of racial prejudice.
2. Whether the venue decision violated equal protection because it allegedly resulted from purposeful racial discrimination.
3. Whether trial counsel rendered ineffective assistance by failing to object to the erroneous cross-reference in the mitigating-circumstances instruction.
4. Whether Mallett could obtain Rule 27.26 relief on a recusal claim that had been abandoned or presented as trial error on direct appeal.
5. Whether the denial of a further change of venue could be relitigated in post-conviction proceedings.
6. Whether the statutory aggravating circumstance of depravity of mind was unconstitutionally vague.
7. Whether appellate counsel was ineffective for declining to raise a claim concerning the failure to strike venireperson Karen Long for cause.

HOLDINGS

1. The transfer of venue to Schuyler County did not deny Mallett a fundamentally fair trial or violate due process. The absence of potential Black jurors, the cross-racial nature of the murder, and the venue-selection procedure did not establish identifiable prejudice or an inherently unacceptable probability of prejudice.
2. Mallett failed to establish an equal protection violation because he did not prove purposeful discrimination in the selection of Schuyler County.
3. Trial counsel's failure to object to the erroneous reference in the mitigating-circumstances instruction did not constitute prejudicial ineffective assistance because Mallett failed to show a reasonable probability that the outcome would have been different.
4. The motion court properly denied relief on the recusal claim and on the renewed venue claim because Rule 27.26 is not a substitute for direct appeal and matters decided or abandoned as trial errors generally cannot be relitigated through post-conviction relief.
5. The motion court did not err in rejecting the claim that the depravity-of-mind aggravating circumstance was unconstitutionally vague in this case.
6. Appellate counsel was not ineffective for declining to raise the claim concerning venireperson Karen Long because counsel reasonably selected and presented stronger claims and did not breach her duty to Mallett.

KEY QUOTATIONS

“A defendant, however, has no right to a jury of any particular racial composition.” (80)

“Certainly they were not precluded from considering any of the mitigating factors and balancing them against any of the aggravating factors.” (82)

“For the reasons stated in this opinion, the motion court's order vacating movant's sentence is reversed and his 27.26 motion is overruled.” (84)

FACTUAL BACKGROUND

Mallett, who was Black, was convicted of murdering Missouri State Highway Patrolman James Froemsdorf, who was white, and received a death sentence. Venue was transferred from Perry County to Schuyler County, which had only three Black residents according to 1980 census data, and the resulting jury panel contained no Black jurors. The trial court's mitigating-circumstances instruction mistakenly referred to the instruction submitting statutory aggravating circumstances rather than the instruction submitting both statutory and nonstatutory aggravating circumstances.

PROCEDURAL HISTORY

Mallett was convicted of first-degree murder and sentenced to death in the Circuit Court of Schuyler County; the conviction and sentence were affirmed on direct appeal in *State v. Mallett*, 732 S.W.2d 527 (Mo. banc 1987). He then filed a Rule 27.26 motion, amended twice, and received an evidentiary hearing before Special Judge Ronald M. Belt. The motion court found three claims meritorious and vacated the sentence, prompting the State's appeal and Mallett's cross-appeal. The Supreme Court of Missouri reversed and overruled the Rule 27.26 motion.

DISPOSITION

reversed

CASES CITED

- *State v. Mallett*, 732 S.W.2d 527 (Mo. banc 1987)
- *Sanders v. State*, 738 S.W.2d 856 (Mo. banc 1987)
- *Estes v. State of Texas*, 381 U.S. 532 (1965)
- *Sheppard v. Maxwell*, 384 U.S. 333 (1966)
- *Taylor v. Louisiana*, 419 U.S. 522 (1975)
- *State v. Blair*, 638 S.W.2d 739 (Mo. banc 1982), cert. denied, 459 U.S. 1188 (1983)
- *McCleskey v. Kemp*, 481 U.S. 279 (1987)
- *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979)
- *Wayte v. United States*, 470 U.S. 598 (1985)
- *Batson v. Kentucky*, 476 U.S. 79 (1986)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *California v. Brown*, 479 U.S. 538 (1987)

- O'Neal v. State, 486 S.W.2d 206 (Mo. 1972)
- Schlup v. State, 758 S.W.2d 715 (Mo. banc 1988)
- State v. Griffin, 756 S.W.2d 475 (Mo. banc 1988)
- Jones v. State, 767 S.W.2d 41 (Mo. banc 1989)
- Blackmon v. White, 825 F.2d 1263 (8th Cir. 1987)
- Camillo v. State, 757 S.W.2d 234 (Mo. App. 1988)
- Jones v. Barnes, 463 U.S. 745 (1983)
- Hemphill v. State, 566 S.W.2d 200 (Mo. banc 1978)
- Morris v. State, 603 S.W.2d 938 (Mo. banc 1980)
- Buskuehl v. State, 719 S.W.2d 504 (Mo. App. 1986)