

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. VanDivner

634 Pa. 482 (2015) (Pa. 2015) · No. No. 696 CAP · Decided December 29, 2015

SUMMARY

The Supreme Court of Pennsylvania reviewed James VanDivner’s appeal from the denial of post-conviction relief in a capital murder case. The court addressed his claim that he was ineligible for the death penalty under *Atkins v. Virginia* and Pennsylvania’s intellectual-disability standards, including the requirement that the disability manifest before age 18. The court vacated the PCRA court’s order and remanded for a supplemental opinion concerning the age-of-onset issue, deferring review of the remaining claims.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Todd; Chief Justice Saylor; Justice Eakin; Justice Baer; Justice Stevens
JURISDICTION	Pennsylvania
DECIDED	December 29, 2015
DOCKET	No. 696 CAP
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Capital PCRA appeal from an order of the Fayette County Court of Common Pleas denying post-conviction relief. The Pennsylvania Supreme Court reviewed claims that trial counsel was ineffective for failing to investigate and present evidence that the appellant’s intellectual disability manifested before age eighteen, as required for an <i>Atkins</i> /Miller death-penalty exemption.
STANDARD OF REVIEW	PCRA determinations are reviewed for support in the record and freedom from legal error. Whether a petitioner satisfies the intellectual-disability criteria under <i>Atkins</i> and <i>Miller</i> is a mixed question of law and fact: factual findings must be supported by substantial evidence and the legal conclusions drawn from them must not be clearly erroneous.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	James VanDivner v. Commonwealth of Pennsylvania

TOPICS

state post-conviction relief ineffective assistance competency to be executed cruel and unusual punishment
fourteenth amendment

PRACTICE AREAS

criminal post-conviction capital punishment ineffective assistance of counsel intellectual disability

QUESTIONS PRESENTED

1. Whether the PCRA court erred in rejecting VanDivner's claim that trial counsel was ineffective for failing to investigate and present evidence that his intellectual disability manifested before age eighteen.
2. Whether the PCRA court's factual finding that VanDivner failed to establish pre-eighteen onset of intellectual disability was supported by substantial evidence.
3. Whether the PCRA court had to address counsel's reasonable basis and prejudice, including whether proof of the three Miller criteria would have rendered VanDivner ineligible for the death penalty.
4. Whether VanDivner's constitutional challenge to the pre-eighteen age-of-onset requirement was previously litigated or waived under the PCRA.

HOLDINGS

1. The PCRA court's finding that VanDivner failed to establish that his intellectual disabilities manifested before age eighteen was not supported by substantial evidence.
2. VanDivner's ineffective-assistance claim had arguable merit because counsel failed to investigate potentially significant evidence concerning the historical special-education placement rules, additional school records, and the testimony of the former special-education supervisor.
3. The PCRA court had to determine on remand whether counsel had a reasonable basis for failing to investigate and present the omitted evidence and whether VanDivner was prejudiced by that failure.
4. The PCRA court properly denied VanDivner relief on his constitutional challenge to the pre-eighteen age-of-onset requirement because his Eighth Amendment claim had been previously litigated on direct appeal and his Eighth and Fourteenth Amendment claims were not raised in his amended PCRA petitions.

KEY QUOTATIONS

"For the reasons that follow, we vacate the order of the PCRA court and remand for a supplemental opinion consistent with this opinion." (130 A.3d at 676)

"we are constrained to conclude that the PCRA court's factual finding that Appellant failed to establish that his intellectual disabilities existed prior to the age of 18 is not supported by substantial evidence." (130 A.3d at 686)

"Order vacated and case remanded. Jurisdiction retained." (130 A.3d at 693)

FACTUAL BACKGROUND

In July 2004, James VanDivner fatally shot his fiancée, Michelle Cable, and shot her son, Billy Cable, in the neck; he also threatened Larry Newman with the firearm. A jury convicted him of first-degree murder, attempted criminal homicide, and aggravated assault and imposed a death sentence. Before trial, VanDivner presented evidence of low intellectual functioning and adaptive limitations, but the trial court found that he had not established that those disabilities manifested before age eighteen. In the PCRA proceedings, additional school records and expert testimony indicated that he had been placed in special education as a child and may have had an IQ of 75 or below, but the PCRA court rejected that evidence.

PROCEDURAL HISTORY

VanDivner was convicted of first-degree murder, attempted criminal homicide, and aggravated assault, and received a death sentence plus consecutive terms of imprisonment. The Pennsylvania Supreme Court affirmed the judgment of sentence on direct appeal. After the PCRA court denied his amended petition following evidentiary hearings, VanDivner appealed. The Supreme Court vacated the PCRA order and remanded for a supplemental opinion addressing counsel's reasonable basis and prejudice, including whether proof of pre-eighteen intellectual disability would have established death-penalty ineligibility.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The PCRA court must prepare a supplemental opinion addressing whether trial counsel had a reasonable basis for failing to investigate the state regulations governing special-education placement, obtain additional school records, and present Dr. Sheetz's testimony. It must also determine whether VanDivner was prejudiced, including whether proof of pre-eighteen onset would have established the remaining Miller criteria and rendered him ineligible for the death penalty. The Supreme Court retained jurisdiction.

CASES CITED

- Commonwealth v. VanDivner, 962 A.2d 1170 (Pa. 2009)
- Atkins v. Virginia, 536 U.S. 304 (2002)
- Commonwealth v. Miller, 888 A.2d 624 (Pa. 2005)
- Hall v. Florida, 134 S. Ct. 1986 (2014)
- Commonwealth v. Bracey, 117 A.3d 270 (Pa. 2015)
- Commonwealth v. Rainey, 928 A.2d 215 (Pa. 2007)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Commonwealth v. Pierce, 786 A.2d 203 (Pa. 2001)
- Commonwealth v. Ali, 10 A.3d 282 (Pa. 2010)
- Commonwealth v. Tharp, 101 A.3d 736 (Pa. 2014)
- Brumfield v. Cain, 135 S. Ct. 2269 (2015)

- Commonwealth v. Gibson, 925 A.2d 167 (Pa. 2007)

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