

SUPREME COURT OF MISSISSIPPI

Julius Wesley Kiker v. State of Mississippi

No. 2008-CT-01341-SCT · No. No. 2008-CT-01341-SCT · Decided July 22, 2008

SUMMARY

The Supreme Court of Mississippi held that defense counsel had an actual conflict of interest because he simultaneously represented the defendant and a prosecution witness. Because the defendant did not knowingly and intelligently waive the conflict, prejudice was presumed under the Sixth Amendment. The court reversed the Court of Appeals and the denial of post-conviction relief, and remanded the case.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Kitchens, Justice, for the Court; Waller, C.J.; Carlson, P.J.; Graves, P.J.; Dickinson, J.; Randolph, J.; Lamar, J.; Chandler, J.; Pierce, J.
JURISDICTION	Mississippi
DECIDED	July 22, 2008
DOCKET	No. 2008-CT-01341-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kiker sought post-conviction relief after his murder conviction and sentence were affirmed on direct appeal. The trial court denied relief after an evidentiary hearing, and the Mississippi Court of Appeals affirmed. The Mississippi Supreme Court granted certiorari and reversed.
STANDARD OF REVIEW	The Supreme Court reviewed the post-conviction ruling and the conflict-of-interest issue de novo as a constitutional question; when an actual conflict is established, specific prejudice need not be shown unless the defendant knowingly and intelligently waived conflict-free counsel.
PRECEDENTIAL VALUE	published, precedential Mississippi Supreme Court opinion
PARTIES	Julius Wesley Kiker v. State of Mississippi

TOPICS

state post-conviction relief

ineffective assistance

sixth amendment

right to counsel

appellate procedure

PRACTICE AREAS

criminal law

post-conviction relief

constitutional criminal procedure

legal ethics

QUESTIONS PRESENTED

1. Whether defense counsel had an actual conflict of interest by simultaneously representing Kiker and Crawford, a prosecution witness against Kiker.
2. Whether the representation by cocounsel, Darryl Hurt, cured or avoided the conflict attributable to Barnett.
3. Whether Kiker was required to demonstrate specific prejudice under Strickland despite counsel's actual conflict.
4. Whether Kiker knowingly and intelligently waived his constitutional right to conflict-free counsel.

HOLDINGS

1. Defense counsel had an actual conflict of interest because Barnett simultaneously represented Kiker and Crawford, a prosecution witness against Kiker, creating irreconcilable duties of loyalty.
2. Cocounsel's role did not cure Barnett's conflict; the conflict was imputed to cocounsel because both attorneys jointly represented Kiker.
3. Because Barnett actively represented conflicting interests, Kiker was not required to demonstrate specific prejudice; prejudice was presumed and reversal was automatic absent a knowing and intelligent waiver.
4. Kiker did not knowingly and intelligently waive the actual conflict of interest.

KEY QUOTATIONS

“Under our system of jurisprudence, if a lawyer is not one hundred percent loyal to his client, he flunks.”
(¶14)

“When the accused is represented by an attorney with an actual conflict of interest, the accused has received ineffective assistance of counsel as a matter of law, and “reversal is automatic irrespective of a showing of prejudice unless [the accused] knowingly and intelligently waived his constitutional right to conflict free representation.”” (¶16)

“In the absence of a knowing and intelligent waiver from Kiker, prejudice is presumed, and we must reverse the conviction and remand the case.” (¶23)

FACTUAL BACKGROUND

Julius Wesley Kiker was convicted of murdering his wife after claiming that she was accidentally shot during a struggle over a firearm. Bobby Crawford, a jailhouse informant, testified that Kiker had confessed to

intentionally shooting his wife. Kiker's attorney, Sidney Barnett, simultaneously represented Crawford, who was a prosecution witness facing criminal charges, and Kiker was not informed of the conflict or asked to waive it.

PROCEDURAL HISTORY

Kiker was convicted by a jury of murdering his wife and sentenced to life imprisonment. The Court of Appeals affirmed the conviction and sentence. After the Mississippi Supreme Court granted Kiker leave to pursue a post-conviction claim concerning his counsel's concurrent representation of a prosecution witness, the George County Circuit Court denied relief and the Court of Appeals affirmed. The Supreme Court granted certiorari, found an actual conflict of interest without a knowing waiver, and reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court reversed the Court of Appeals' decision and the trial judge's denial of Kiker's petition for post-conviction relief and remanded the case.

CASES CITED

- Kiker v. State (Kiker I), 919 So. 2d 190 (Miss. Ct. App. 2005)
- Kiker v. State (Kiker II), 2009 WL 3740685 (Miss. Ct. App. Nov. 10, 2009)
- Armstrong v. State, 573 So. 2d 1329 (Miss. 1990)
- Littlejohn v. State, 593 So. 2d 20 (Miss. 1992)
- Alvarez v. U.S., 580 F.2d 1251 (5th Cir. 1978)
- Porter v. U.S., 298 F.2d 461 (5th Cir. 1962)
- Cuyler v. Sullivan, 446 U.S. 335 (1980)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Mickens v. Taylor, 535 U.S. 162 (2001)
- People v. Thomas, 545 N.E.2d 645 (Ill. 1989)
- Commonwealth v. Hodge, 434 N.E.2d 1246 (Mass. 1982)
- People v. Stewart, 511 N.Y.S.2d 715 (N.Y. App. Div. 1987)
- Sullivan v. United States, 446 U.S. 335 (1980)