

SUPREME COURT OF MISSOURI

Strong v. State

263 S.W.3d 636 (Mo. banc 2008) · No. SC 88311 · Decided July 31, 2008

SUMMARY

The Supreme Court of Missouri affirmed the denial of Richard Strong’s Rule 29.15 motion for post-conviction relief from two first-degree murder convictions and death sentences. The court rejected claims concerning post-trial juror contact, religion-based Batson challenges, trial strategy, evidentiary objections, penalty-phase presentation, and Missouri’s lethal-injection method. The excerpt discusses the Strickland ineffective-assistance standard and the requirements for demonstrating prejudice or structural error.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Patricia Breckenridge; Price; Limbaugh; Russell; Wolff; Stith; Teitelman
JURISDICTION	Missouri
DECIDED	July 31, 2008
DOCKET	SC 88311
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a Missouri Rule 29.15 motion for post-conviction relief following convictions for two counts of first-degree murder and death sentences.
STANDARD OF REVIEW	The motion court's ruling is presumed correct and will be reversed only if its findings of fact or conclusions of law are clearly erroneous. A ruling is clearly erroneous only when review leaves the appellate court with a definite impression that a mistake has been made. Ineffective-assistance claims are evaluated under Strickland v. Washington, requiring proof of deficient performance and prejudice by a preponderance of the evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Strong v. State of Missouri

TOPICS

state post-conviction relief

ineffective assistance

sentencing

jury selection

cruel and unusual punishment

PRACTICE AREAS

state post-conviction relief

capital defense

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the motion court erred by refusing to permit post-trial contact with jurors to investigate ineffective-assistance and juror-misconduct claims.
2. Whether trial counsel was ineffective for failing to raise religion-based Batson objections to the State's peremptory strikes of venirepersons Sylvia Stevenson and Luke Bobo.
3. Whether counsel was ineffective for pursuing a reasonable-doubt defense rather than a lack-of-deliberation or second-degree-murder defense.
4. Whether counsel was ineffective for failing to object under Crawford to admission of the victim's out-of-court statements concerning an earlier assault.
5. Whether counsel was ineffective for failing to preserve objections to the prosecutor's computerized photographic slide show and to record the jury's reactions.
6. Whether counsel was ineffective for failing to investigate and present additional mitigating evidence and witnesses during the penalty phase.
7. Whether counsel was ineffective for failing to present Strong's videotaped police interview during the penalty phase.
8. Whether Missouri's lethal-injection method constituted cruel and unusual punishment and whether that claim was ripe.

HOLDINGS

1. A post-conviction movant has no inherent right to contact or interview jurors after trial, and the motion court did not clearly err in refusing permission where Strong offered only generalized allegations of misconduct and sought access to the jury's deliberative thought processes.
2. Counsel's failure to raise religion-based Batson objections did not entitle Strong to post-conviction relief because he neither showed that an unqualified or biased juror served nor demonstrated a reasonable probability of a different outcome.
3. Counsel's decision not to pursue a lack-of-deliberation or second-degree-murder defense was a reasonable strategic choice supported by the evidence and did not constitute ineffective assistance.
4. Counsel was not ineffective for failing to object under Crawford v. Washington to the victim's out-of-court statements because Strong's trial occurred before Crawford was decided.
5. Strong could not obtain post-conviction relief on claims concerning the photographic slide show because the Supreme Court had already reviewed the merits of the photographic and slide-show claims on direct appeal; Rule 29.15 proceedings may not serve as a second appellate review.

6. Strong failed to establish ineffective assistance based on counsel's investigation, selection, or presentation of mitigation witnesses and experts.
7. Counsel was not ineffective for declining to present Strong's contradictory videotaped police interview during the penalty phase because the decision was a reasonable strategic choice.
8. Strong's challenge to Missouri's lethal-injection method was not ripe because he had not exhausted his appeals and it was unknown what method or protocol, if any, would be used if execution later occurred.

KEY QUOTATIONS

"A motion court's judgment will only be overturned when either its findings of fact or its conclusions of law are clearly erroneous." (642)

"In accordance with these authorities, this Court holds that counsel's failure to raise a Batson objection, absent any attempt by Mr. Strong to demonstrate that unqualified persons served on the jury, does not amount to a structural defect that entitles him to a presumption of prejudice." (648-649)

"As such, even if Mr. Strong's claim contained merit, it is not yet ripe." (654)

FACTUAL BACKGROUND

Police responding to a 911 call found Eva Washington and her two-year-old daughter, Zandrea Thomas, dead in Washington's apartment from numerous stab wounds. Strong was present, gave inconsistent accounts about the victims, displayed blood and dark stains on his clothing, fled when police entered, and later stated, "I killed them." A three-month-old child was also in the apartment but was unharmed. Strong was convicted of two first-degree murders and sentenced to death.

PROCEDURAL HISTORY

A jury convicted Strong of two counts of first-degree murder and recommended death sentences, which the trial court imposed. The Supreme Court of Missouri affirmed the convictions and sentences on direct appeal. Strong then filed a Rule 29.15 post-conviction motion; after an evidentiary hearing, the motion court denied all claims, and the Supreme Court of Missouri affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Strong, 142 S.W.3d 702 (Mo. banc 2004)
- Worthington v. State, 166 S.W.3d 566, 572-73, 583 n. 3 (Mo. banc 2005)
- Strickland v. Washington, 466 U.S. 668, 687, 690, 697 (1984)
- Anderson v. State, 196 S.W.3d 28, 33-34 (Mo. banc 2006)
- State v. Jones, 979 S.W.2d 171, 183 (Mo. banc 1998)
- State v. Babb, 680 S.W.2d 150, 152 (Mo. banc 1984)

- Franklin v. State, 156 S.W.3d 507 (Mo. App. 2005)
- Storey v. State, 175 S.W.3d 116, 130 (Mo. banc 2005)
- Glass v. State, 227 S.W.3d 463, 468, 472 (Mo. banc 2007)
- State v. Parker, 836 S.W.2d 930, 935 (Mo. banc 1992)
- State ex rel. York v. Daugherty, 969 S.W.2d 223, 224 (Mo. banc 1998)
- United States v. Brown, 352 F.3d 654, 662 (2d Cir. 2003)
- Arizona v. Fulminante, 499 U.S. 279, 309-10 (1991)
- Knese v. State, 85 S.W.3d 628, 632-33 (Mo. banc 2002)
- Anderson v. State, 196 S.W.3d 28, 39-42 (Mo. banc 2006)
- Young v. Bowersox, 161 F.3d 1159, 1160-61 (8th Cir. 1998)
- Scott v. State, 183 S.W.3d 244, 247-48 (Mo. App. 2005)
- State v. Colbert, 949 S.W.2d 932, 944 (Mo. App. 1997)
- State v. Wolfe, 13 S.W.3d 248, 264 (Mo. banc 2000)
- Wilkins v. State, 802 S.W.2d 491, 497 (Mo. banc 1991)
- State v. Harris, 870 S.W.2d 798, 816-17 (Mo. banc 1994)
- Rompilla v. Beard, 545 U.S. 374, 383 (2005)
- Hutchison v. State, 150 S.W.3d 292, 304 (Mo. banc 2004)
- Matthews v. State, 175 S.W.3d 110, 116 (Mo. banc 2005)
- Crawford v. Washington, 541 U.S. 36, 53-54 (2004)
- Davis v. Washington, 547 U.S. 813 (2006)