

SUPREME COURT OF ALABAMA

Ex parte Davis

9 So. 3d 537 (Ala. 2007) · No. 1051719 · Decided August 3, 2007

SUMMARY

The Supreme Court of Alabama held that, under Ex parte Clemons, procedural bars in Rule 32.2(a), Ala. R. Crim. P., are nonjurisdictional and may be waived. The court reversed the Court of Criminal Appeals' sua sponte application of those bars to Jimmy Davis's ineffective-assistance-of-counsel claims and remanded for consideration of the claims on their merits.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Lyons; See; Woodall; Smith; Bolin; Parker; Murdock; Stuart; Cobb
JURISDICTION	Alabama
DECIDED	August 3, 2007
DOCKET	1051719
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On rehearing ex mero motu, the Supreme Court of Alabama reviewed whether its intervening decision in Ex parte Clemons required reversal of the Court of Criminal Appeals' judgment procedurally barring Davis's ineffective-assistance-of-counsel claims in his Rule 32 post-conviction proceeding.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jimmy Davis, Jr. v. State of Alabama

TOPICS

- state post-conviction relief
- post-conviction relief
- ineffective assistance
- appellate procedure
- criminal procedure

PRACTICE AREAS

- Alabama criminal post-conviction practice
- capital post-conviction litigation
- ineffective assistance of counsel
- appellate procedure

QUESTIONS PRESENTED

1. Whether *Ex parte Clemons*'s holding that Rule 32.2(a) procedural bars are nonjurisdictional and waivable required reversal of the Court of Criminal Appeals' judgment.
2. Whether the Supreme Court of Alabama should decide the merits of Davis's ineffective-assistance-of-counsel claims or direct the Court of Criminal Appeals to grant relief based on that court's prior dictum regarding penalty-phase counsel.

HOLDINGS

1. Because Rule 32.2(a) procedural bars are nonjurisdictional and waivable, the Court of Criminal Appeals erred by sua sponte applying those bars to Davis's ineffective-assistance-of-counsel claims after the State had not raised them in the trial court.
2. The Supreme Court declined to decide issues not previously considered on the merits by the Court of Criminal Appeals and declined to direct that court to adopt its prior dictum regarding Davis's penalty-phase ineffective-assistance claim; instead, the Court of Criminal Appeals was required to consider all of Davis's ineffective-assistance claims on their merits.

KEY QUOTATIONS

"We decline to address issues not previously considered on the merits by the Court of Criminal Appeals, nor are we disposed to direct that court to embrace previous dictum as to Davis's claim regarding ineffective assistance of counsel at the penalty phase." (9 So. 3d at 539)

"We reverse the judgment of the Court of Criminal Appeals and remand the case for that court to consider all Davis's ineffective-assistance-of-counsel claims on their merits." (9 So. 3d at 539)

FACTUAL BACKGROUND

Davis was convicted of capital murder in 1993 and sentenced to death. In his Rule 32 petition, he alleged ineffective assistance of counsel, including failures relating to the investigation and presentation of mitigation evidence at sentencing. The trial court addressed and rejected those claims on their merits, but the Court of Criminal Appeals later invoked Rule 32.2(a) sua sponte to bar them.

PROCEDURAL HISTORY

Davis was convicted of capital murder and sentenced to death in 1993. After the conviction and sentence were affirmed on direct review, Davis filed a Rule 32 petition in 2000 alleging, among other claims, ineffective assistance of counsel. The trial court denied the petition on the merits, but the Court of Criminal Appeals sua sponte held that the ineffective-assistance claims were barred under Rule 32.2(a)(3) and (a)(5). The Supreme Court initially denied certiorari, then withdrew its certificate of judgment and granted rehearing after deciding in *Ex parte Clemons* that Rule 32.2(a) procedural bars were nonjurisdictional and waivable.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Alabama Court of Criminal Appeals to consider all of Davis's ineffective-assistance-of-counsel claims on their merits.

CASES CITED

- Ex parte Clemons, [Ms. 1041915, May 4, 2007] (Ala. 2007)
- Davis v. State, 9 So. 3d 514 (Ala. Crim. App. 2006)
- Ex parte Davis, 718 So. 2d 1166 (Ala. 1998)
- Davis v. State, 718 So. 2d 1148 (Ala. Crim. App. 1995)
- Davis v. State, 718 So. 2d 1148, 1152-1153 (Ala. Crim. App. 1995)