

SUPREME COURT OF ARKANSAS

Williams v. State

2017 Ark. 151 (2017) · No. CR-97-949 · Decided April 24, 2017

SUMMARY

This concurring opinion addresses a motion to recall the mandate in a death-penalty case. Justice Josephine Linker Hart concludes that the appellate process failed to comply with Arkansas Supreme Court Rule 4-3(i) because the mitigating-circumstances verdict form was absent from the record and later was shown to be unsigned by the jury foreman. She concurs in the result because the court determined that the error was harmless.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Josephine Linker Hart                                                                                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | April 24, 2017                                                                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | CR-97-949                                                                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Appellant moved to recall the mandate in a capital case, arguing that defects and omissions in the mitigating-circumstances verdict forms prevented the required appellate review. Justice Hart filed a concurring opinion explaining why she believed the mandate should be recalled, while concurring in the court's disposition because the court applied harmless-error principles. |
| STANDARD OF REVIEW    | In death- or life-imprisonment cases, the Arkansas Supreme Court must review all errors prejudicial to the appellant under Arkansas Supreme Court Rule 4-3(i) and Ark. Code Ann. § 16-91-113(a). The concurrence states that the court applied harmless-error review to the verdict-form defects.                                                                                       |
| PRECEDENTIAL VALUE    | Published concurring opinion; nonbinding as to propositions stated only by the concurrence                                                                                                                                                                                                                                                                                              |
| PARTIES               | Marcel Wayne Williams v. State of Arkansas                                                                                                                                                                                                                                                                                                                                              |

TOPICS

appellate procedure

sentencing

criminal procedure

post-conviction relief

standard of review

## PRACTICE AREAS

criminal procedure

capital sentencing

appellate procedure

post-conviction relief

## QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court should recall its mandate because the required review of a capital sentencing proceeding was impossible or materially undermined by the omission and defects in the mitigating-circumstances verdict form.
2. Whether harmless-error principles could be applied to the defects in the capital sentencing verdict forms.

## HOLDINGS

1. Justice Hart concluded that the omission and unsigned verdict form prevented a reliable determination that the jury had properly reviewed and weighed mitigating evidence and therefore believed the proceedings demonstrated a breakdown in the appellate process warranting recall of the mandate.
2. The concurrence states that the court applied harmless-error principles to the defects, and Justice Hart concurred in the disposition because the court had decided that harmless error applied, at least in that case.

## KEY QUOTATIONS

*“Without these mandatory written findings in the record, review was impossible.”*

*“I cannot ignore that it is defective—it was not signed by the jury foreman.”*

*“Accordingly, I must concur because this court has decided that harmless error applies—at least today.”*

## FACTUAL BACKGROUND

Williams was sentenced to death after a jury proceeding involving aggravating and mitigating circumstances. The mitigating-circumstances portion of the verdict form was absent from the transcript and the appellate briefs during the original review. When the form was later before the court, it was defective because it was not signed by the jury foreman, leaving uncertainty whether the jury properly considered and weighed the mitigation evidence.

## PROCEDURAL HISTORY

Williams was convicted and sentenced to death. On direct review, the Arkansas Supreme Court concluded that substantial evidence supported the jury's findings concerning aggravating circumstances and mitigation, although the mitigating-circumstances portion of the verdict form was not included in the transcript or appellate briefs. In the mandate-recall proceeding, the form was eventually presented to the court, but it was unsigned by the jury foreman and did not establish that the jury properly reviewed or weighed mitigating evidence. Justice Hart stated that the required review under Arkansas Supreme Court Rule 4-3(i) had not been accomplished and concurred only because the court applied harmless error.

## DISPOSITION

other

## CASES CITED

- Williams v. State, 338 Ark. 97, 109, 991 S.W.2d 565, 571 (1999)
- Williams v. State, 2011 Ark. 534
- Nooner v. State, 2014 Ark. 296, 438 S.W.3d 233

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