

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

OPINION

PER CURIAM.

Cite as 2017 Ark. 151 SUPREME COURT OF ARKANSAS No. CR-97-949 MARCEL WAYNE WILLIAMS Opinion Delivered April 24, 2017 APPELLANT MOTION TO RECALL MANDATE V. STATE OF ARKANSAS APPELLEE CONCURRING OPINION. JOSEPHINE LINKER HART, Justice After completing our telephone conference, I felt both a legal and a moral obligation to explain why the proceedings demonstrate a breakdown in the appellate process that should require this court to recall the mandate.

Under the Arkansas Constitution, this court's only role in death-penalty litigation is to ensure that all of the procedures that constitute due process have been followed. The jury decides guilt and punishment—not this court.

The fact that Marcel Williams committed a heinous crime is not contested, not even by Williams himself. However, that fact does not excuse us from our duty to review the entire record for error pursuant to Supreme Court Rule 4-3(i).¹ The rule states: (i) Court's Review of Errors in Death or Life Imprisonment Cases. When the sentence is death or life imprisonment, the Court must review all errors prejudicial to the appellant in accordance with Ark.

Code Ann. § 16-91-113(a). To make that review possible, the appellant must abstract, or include in the Addendum, as appropriate, all rulings adverse to him or her made by the circuit court on all objections, motions and requests made by either party, together with such parts of the record as are needed for 1 At the time of Williams's trial, the Rule was numbered 4-3(h).

Cite as 2017 Ark. 151 an understanding of each adverse ruling. The Attorney General will make certain and certify that all of those objections have been abstracted, or included in the Addendum, and will brief all points argued by the appellant and any other points that appear to involve prejudicial error.

In the case before us, it obvious that Rule 4-3(i) was not accomplished by either the Attorney General or this court because the mitigating-circumstances portion of the verdict form was not in the transcript or in the briefs presented to the reviewing court, a fact that is not contested. Even so,

this court stated in *Williams v. State*, “We conclude substantial evidence supported the jury’s finding that aggravating circumstances existed beyond a reasonable doubt and that they outweighed the defendant’s mitigating circumstances.” 338 Ark.

97, 109, 991 S.W.2d 565, 571 (1999). Under the statute that was in effect at the time of Williams’s sentencing, to impose a death sentence: (1) The jury shall impose a sentence of death if it unanimously returns written findings that: (a) aggravating circumstances exist beyond a reasonable doubt; and (b) aggravating circumstances outweigh beyond a reasonable doubt all mitigating circumstances found to exist; and (c) aggravating circumstances justify a sentence of death beyond a reasonable doubt.

No. 474, 1981 Ark. Acts 1137. Without these mandatory written findings in the record, review was impossible. I am mindful that this court has been inconsistent in deciding whether the recall of a mandate is warranted when there are errors in verdict forms for mitigating circumstances. Even though the verdict form on mitigating circumstance is at last before this court, it does not 2 Cite as 2017 Ark. cure the problem.

I cannot ignore that it is defective—it was not signed by the jury foreman. As the petitioner notes, based on the face of the forms, it cannot be concluded that the jury properly reviewed mitigation evidence and whether it properly weighed the evidence before sentencing him to death.

We have previously granted a recall of the mandate when there are defects in the verdict forms relating to mitigating circumstances. See *Williams v. State*, 2011 Ark. 534(Frank Williams, Jr., not the petitioner). However, Williams was subsequently overruled by *Nooner v. State*, 2014 Ark. 296, 438 S.W.3d 233.

Accordingly, I must concur because this court has decided that harmless error applies—at least today. 3