

MISSISSIPPI SUPREME COURT

Moffett v. State

156 So. 3d 835 (Miss. 2014) · Decided April 24, 2014

SUMMARY

The Mississippi Supreme Court considers Eric Moffett’s motions for post-conviction relief following his capital-murder conviction and death sentence. Moffett primarily alleged ineffective assistance of trial and appellate counsel, including failures relating to mental-health investigation, mitigation evidence, and objections to prosecutorial comments. The court denied relief, concluding that the claims lacked merit or failed to satisfy the Strickland standard.

CASE DETAILS

COURT	Mississippi Supreme Court
WRITING FOR THE COURT	Randolph, Presiding Justice; Waller, C.J.; Lamar, J.; Kitchens, J.; Chandler, J.; Pierce, J.; King, J.; Coleman, J.; Dickinson, P.J.
JURISDICTION	Mississippi
DECIDED	April 24, 2014
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Application for leave to proceed in the trial court with a petition for post-conviction relief following a capital-murder conviction and death sentence.
STANDARD OF REVIEW	Ineffective-assistance claims are reviewed under Strickland v. Washington, requiring proof of deficient performance and resulting prejudice. Prosecutorial-misconduct claims are evaluated under whether the natural and probable effect of the argument created unjust prejudice. Sufficiency of aggravating-circumstance evidence is reviewed under whether, viewing the evidence in the light most favorable to the prosecution, any rational factfinder could have found the required elements beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion
PARTIES	Eric Moffett v. State of Mississippi

TOPICS

- state post-conviction relief
- ineffective assistance
- sentencing
- prosecutorial misconduct
- evidence

PRACTICE AREAS

criminal post-conviction relief

capital litigation

ineffective assistance of counsel

criminal procedure

evidence

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to obtain a mental-health evaluation or conduct an adequate mitigation investigation.
2. Whether trial counsel was ineffective for failing to object to allegedly improper prosecutorial comments, including comments about the death penalty, Moffett's demeanor and remorse, defense counsel, witness credibility, biblical references, and sentencing arguments.
3. Whether appellate counsel was ineffective for failing to raise the admission of a prior consistent statement, testimony concerning the heinous, atrocious, or cruel aggravator, and other asserted errors on direct appeal.
4. Whether counsel was ineffective for failing to renew a motion for a cooling-off period between the guilt and sentencing phases.
5. Whether claims concerning victim-impact testimony and the heinous, atrocious, or cruel aggravator were barred by res judicata after being decided on direct appeal.
6. Whether cumulative error required reversal of Moffett's conviction or death sentence.

HOLDINGS

1. Moffett failed to establish either deficient performance or prejudice under Strickland. Counsel conducted a mitigation investigation and made a conscious strategic decision to present a Skipper-based mitigation case rather than mental-health evidence that counsel reasonably viewed as inconsistent with the defense theory.
2. Moffett failed to prove ineffective assistance arising from counsel's failure to object to the challenged prosecutorial comments. Viewed in context, the comments either were permissible argument, were harmless in light of the overwhelming evidence, or did not create unjust prejudice.
3. Appellate counsel was not ineffective for failing to raise the admission of Donald Davis's prior consistent statement because counsel is not constitutionally required to raise every nonfrivolous issue and the underlying evidentiary claim lacked merit.
4. Moffett failed to establish ineffective assistance based on counsel's failure to object to testimony describing the victim's injuries as heinous, atrocious, or cruel, or appellate counsel's failure to raise the issue as plain error.
5. Moffett failed to establish ineffective assistance based on counsel's failure to renew the motion for a twenty-four-hour cooling-off period between the guilt and sentencing phases.
6. Claims concerning victim-impact testimony and the submission of the heinous, atrocious, or cruel aggravator that had been decided on direct appeal could not be relitigated under the guise of ineffective assistance of counsel.

7. The cumulative-error claims did not warrant reversal because Moffett demonstrated no individual errors requiring reversal and no aggregate collection of errors that deprived him of a fundamentally fair trial.

KEY QUOTATIONS

“If successful, he then must make a substantial showing of the denial of a state or federal right.” (845)

“In order to prevail on such a claim, Moffett must demonstrate to this Court that counsel’s performance was deficient and that the deficiency prejudiced the defense of the case.” (845)

“Attorneys are afforded a wide latitude in arguing their case to the jury, but they are not allowed to employ tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the jury.” (867)

“A criminal defendant is not entitled to a perfect trial, only a fair trial.” (871)

FACTUAL BACKGROUND

Moffett was convicted of murdering five-year-old Felicia Griffin after sexually assaulting and battering her. The prosecution presented eyewitness testimony, a confession, and DNA evidence linking Moffett to semen found on a towel at the crime scene. The jury found that the murder occurred during felonious child abuse and was especially heinous, atrocious, or cruel, and imposed a death sentence. In post-conviction proceedings, Moffett principally challenged the performance of his trial and appellate counsel, including counsel's investigation of mitigation evidence, failure to object to prosecutorial comments and testimony, failure to renew a requested cooling-off period, and failure to raise certain issues on direct appeal.

PROCEDURAL HISTORY

Moffett was convicted of capital murder and sentenced to death in February 2006. The Mississippi Supreme Court affirmed on direct appeal, and the United States Supreme Court denied certiorari on October 3, 2011. Moffett filed an initial post-conviction motion on December 7, 2011, an amended motion, and a supplemental motion after the Mississippi Supreme Court stayed the proceedings to permit mental-health evaluations. The Mississippi Supreme Court denied all requested post-conviction relief.

DISPOSITION

writ_denied

CASES CITED

- *Moffett v. State*, 49 So. 3d 1073 (Miss. 2010)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *Stringer v. State*, 454 So. 2d 468, 477 (Miss. 1984)
- *Foster v. State*, 687 So. 2d 1124 (Miss. 1996)
- *Havard v. State*, 988 So. 2d 322, 334 (Miss. 2008)
- *Williams v. State*, 722 So. 2d 447, 450 (Miss. 1998)

- *Spicer v. State*, 973 So. 2d 184 (Miss. 2007)
- *Sears v. Upton*, 561 U.S. 945, 130 S. Ct. 3259 (2010)
- *Holland v. State*, 705 So. 2d 307 (Miss. 1997)
- *Griffin v. California*, 380 U.S. 609 (1965)
- *Davis v. State*, 684 So. 2d 643, 654 (Miss. 1996)
- *Edwards v. State*, 737 So. 2d 275, 299-301 (Miss. 1999)
- *United States v. Vaccaro*, 115 F.3d 1211 (5th Cir. 1997)
- *United States v. Frascone*, 747 F.2d 953, 957-58 (5th Cir. 1984)
- *United States v. McDonald*, 620 F.2d 559 (5th Cir. 1980)
- *Foster v. State*, 639 So. 2d 1263, 1288 (Miss. 1994)
- *Jones v. Barnes*, 463 U.S. 745 (1983)
- *Hart v. State*, 637 So. 2d 1329, 1339 (Miss. 1994)
- *Bennett v. State*, 933 So. 2d 930, 954-56 (Miss. 2006)
- *McGilberry v. State*, 741 So. 2d 894, 919 (Miss. 1999)
- *Conley v. State*, 790 So. 2d 773, 799 (Miss. 2001)
- *Wilcher v. State*, 863 So. 2d 776, 836 (Miss. 2003)