

10TH CIR.

Underwood v. Royal

10th Cir. (July 2, 2018)

SUMMARY

The Tenth Circuit affirmed denial of habeas relief for a death-sentenced Oklahoma prisoner, rejecting claims of ineffective assistance of counsel (trial counsel’s strategic decision not to call a rebuttal expert was reasonable), prosecutorial misconduct (arguing facts not in evidence did not render trial fundamentally unfair), and improper jury instructions on mitigating evidence (no Lockett/Eddings violation under binding precedent). The court held that admission of the victim’s parents’ death penalty recommendations violated the Eighth Amendment under Booth/Bosse, but the error was not structural or a “Footnote Nine” error and was harmless under Brecht given the brief, restrained statements and strong aggravating evidence, including the jury’s finding of the heinous, atrocious, or cruel aggravator. The court also rejected claims regarding the burden of proof for weighing aggravators and cumulative error.

CASE DETAILS

COURT	10th Cir.
JURISDICTION	Federal
DECIDED	July 2, 2018