

SUPREME COURT OF NEVADA

Evans v. State, 117 Nev. 609

28 P.3d 498 (2001) · No. No. 35641 · Decided July 24, 2001

SUMMARY

The Nevada Supreme Court reviewed Vernell Ray Evans’s post-conviction habeas petition challenging his convictions and death sentences for burglary and four murders. The court affirmed the judgment insofar as it upheld the convictions, but concluded that trial and appellate counsel were ineffective in failing to challenge improper prosecutorial arguments and related penalty-phase issues. It vacated the death sentence and remanded for a new penalty hearing.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Becker, J.; Agosti, J.; Maupin, C.J.; Rose, J.; Shearing, J.; Young, J.; Leavitt, J.
JURISDICTION	Nevada
DECIDED	July 24, 2001
DOCKET	No. 35641
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial, without an evidentiary hearing, of a first post-conviction petition for a writ of habeas corpus challenging convictions and capital sentences.
STANDARD OF REVIEW	Ineffective-assistance claims present mixed questions of law and fact subject to independent review. A district court's competency determination is reviewed for clear abuse of discretion. The district court has broad discretion in fashioning remedies for midtrial discovery violations, and its ruling will not be disturbed absent bad faith or substantial prejudice not alleviated by the remedy. Post-conviction claims must be supported by specific factual allegations; an evidentiary hearing is not required when the allegations are belied or repelled by the record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Vernell Ray Evans v. The State of Nevada

TOPICS

state post-conviction relief ineffective assistance sentencing successive petitions criminal procedure

PRACTICE AREAS

criminal law post-conviction relief capital sentencing ineffective assistance of counsel criminal procedure

QUESTIONS PRESENTED

1. Whether Evans's post-conviction claims required an evidentiary hearing or discovery.
2. Whether trial and appellate counsel were ineffective under Strickland for failing to challenge evidentiary errors, prosecutorial misconduct, charging deficiencies, jury issues, and other alleged trial errors.
3. Whether the prosecutor improperly argued that the jury could consider 'other matter' evidence before determining death eligibility.
4. Whether counsel's failure to challenge the penalty-phase argument prejudiced Evans and required a new penalty hearing.
5. Whether the district court properly applied procedural bars to claims that were or could have been raised earlier.
6. Whether cumulative errors undermined confidence in Evans's convictions.

HOLDINGS

1. A petitioner is not entitled to an evidentiary hearing based on conclusory allegations; specific factual allegations are required, and a hearing is unnecessary when the allegations are belied or repelled by the record.
2. To establish ineffective assistance of counsel, a defendant must show objectively deficient performance and a reasonable probability that, but for the errors, the result would have been different.
3. Counsel were ineffective for failing to challenge the prosecutor's erroneous argument that the jury could consider other-character or 'other matter' evidence before reaching the legally required stage of determining death eligibility.
4. The penalty-phase errors, considered in conjunction with counsel's deficient failure to challenge them, prejudiced Evans and required vacatur of the death sentence and a new penalty hearing.
5. The cumulative effect of the identified guilt-phase errors did not undermine confidence in the convictions or establish a reasonable probability of a different guilt-phase result.
6. Independent habeas claims that were or could have been raised on direct appeal are waived absent cause and actual prejudice; ineffective-assistance claims are generally properly raised in a first post-conviction petition.

KEY QUOTATIONS

“Asking the jury if it had the “intestinal fortitude” to do its “legal duty” was highly improper.” (515)

“This was incorrect and in no way remedied defense counsel's incomplete argument.” (516)

“A sentencing scheme must direct and limit the sentencer's discretion to minimize the risk of arbitrary and capricious action.” (517)

“A new penalty hearing is therefore required.” (517)

FACTUAL BACKGROUND

In 1994, a jury convicted Evans of burglary and four counts of first-degree murder arising from the shooting deaths of four people in a Las Vegas apartment. The State presented eyewitness testimony from a young child, multiple witnesses who testified to Evans's admissions and threats, physical evidence including a palm print and ballistics evidence, and evidence of motive. During the penalty phase, the prosecutor urged the jury to consider prior-felony and other-character evidence before determining death eligibility and also exhorted the jury to have the courage and intestinal fortitude to perform its legal duty. The jury imposed four death sentences after finding aggravating circumstances outweighed mitigation.

PROCEDURAL HISTORY

Evans was convicted in 1994 of burglary and four counts of first-degree murder and received four death sentences plus a consecutive ten-year burglary sentence. The Nevada Supreme Court affirmed his conviction and sentence on direct appeal and later dismissed his appeal from the denial of a new-trial motion. Evans filed a post-conviction habeas petition in 1998, supplemented by appointed counsel in 1999; the district court denied relief without an evidentiary hearing. The Nevada Supreme Court affirmed the denial insofar as it upheld the convictions, but reversed in part, vacated the death sentence, and remanded for a new penalty hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court's order was affirmed insofar as it upheld Evans's convictions, reversed insofar as it denied relief from the death sentence, and Evans's death sentence was vacated. The case was remanded for a new penalty hearing consistent with the opinion and the model instruction concerning the use of other matter evidence.

CASES CITED

- Evans v. State, 112 Nev. 1172, 926 P.2d 265 (1996)
- Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996)
- Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Felix v. State, 109 Nev. 151, 849 P.2d 220 (1993)
- Brady v. Maryland, 373 U.S. 83 (1963)

- Kyles v. Whitley, 514 U.S. 419 (1995)
- Lay v. State, 110 Nev. 1189, 886 P.2d 448 (1994)
- Holmes v. State, 114 Nev. 1357, 972 P.2d 337 (1998)
- Quillen v. State, 112 Nev. 1369, 929 P.2d 893 (1996)
- United States v. Young, 470 U.S. 1 (1985)
- Arave v. Creech, 507 U.S. 463 (1993)
- Zant v. Stephens, 462 U.S. 862 (1983)
- Hollaway v. State, 116 Nev. 732, 6 P.3d 987 (2000)
- Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998)
- Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)
- Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994)
- Garner v. State, 116 Nev. 770, 6 P.3d 1013 (2000)
- Flanagan v. State, 112 Nev. 1409, 930 P.2d 691 (1996)
- Barren v. State, 99 Nev. 661, 669 P.2d 725 (1983)