

SUPREME COURT OF FLORIDA

Tompkins v. State

994 So. 2d 1072 (Fla. 2008) · No. Nos. SC08-992, SC08-1979, SC08-2000 · Decided November 7, 2008

SUMMARY

The Supreme Court of Florida affirmed the denial of Wayne Tompkins's successive postconviction motions and denied his petition invoking all-writs and habeas jurisdiction. The court rejected challenges concerning Florida's lethal-injection protocol, an ABA death-penalty report, the Governor's rescheduling of the execution, the length of time spent on death row, and newly discovered evidence. The court held that the claims were meritless, procedurally barred, or foreclosed by existing precedent.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Wells; Pariente; Lewis; Polston; Anstead; Quince; Canady
JURISDICTION	Florida
DECIDED	November 7, 2008
DOCKET	Nos. SC08-992, SC08-1979, SC08-2000
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tompkins appealed orders summarily denying his fourth and fifth successive motions for postconviction relief under Florida Rule of Criminal Procedure 3.851 and separately petitioned the Supreme Court of Florida for all-writs relief or, alternatively, habeas corpus relief.
STANDARD OF REVIEW	The denial of a Rule 3.851 evidentiary hearing is reviewed de novo because the ruling is effectively a pure question of law. On review of a summary denial, the court accepts the defendant's allegations as true to the extent they are not conclusively refuted by the record.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Florida; the per curiam majority decision is binding Florida precedent.
PARTIES	Wayne Tompkins v. State of Florida

TOPICS

- successive petitions
- state post-conviction relief
- cruel and unusual punishment
- actual innocence
- sentencing

PRACTICE AREAS

capital postconviction litigation

criminal procedure

death penalty

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court improperly summarily denied Tompkins's challenge to Florida's lethal-injection protocol and denied him an opportunity to present additional witnesses.
2. Whether an ABA report concerning Florida's death-penalty system constituted newly discovered evidence establishing that Tompkins's death sentence was cruel and unusual punishment.
3. Whether Governor Crist's 2008 resetting of Tompkins's execution violated section 922.06(2), Florida Statutes, or created an enforceable right to a speedy execution.
4. Whether Tompkins's twenty-three years on death row constituted cruel and unusual punishment.
5. Whether Kimberly Quillin's affidavit constituted newly discovered evidence warranting a new trial or sentencing proceeding.
6. Whether ineffective assistance of postconviction counsel was a cognizable basis for relief.
7. Whether Florida law or the Eighth Amendment required recognition of a freestanding actual-innocence claim.
8. Whether Tompkins was entitled to additional public records under chapter 119, Florida Statutes, and Florida Rule of Criminal Procedure 3.852.
9. Whether the newly disclosed statement by Kenneth Turco required relinquishment of jurisdiction for an evidentiary hearing on a Giglio claim.

HOLDINGS

1. The trial court properly summarily denied Tompkins's challenge to Florida's lethal-injection protocol and was not required to permit additional testimony where the proposed evidence had already been considered in prior litigation and did not establish a basis to depart from controlling precedent.
2. The ABA Florida Death Penalty Assessment Report did not constitute newly discovered evidence warranting postconviction relief or establish that Tompkins's individual death sentence was unconstitutional.
3. Tompkins's challenge to the 2008 resetting of his execution was procedurally barred as untimely, and section 922.06(2) did not provide an enforceable right to a speedy execution or otherwise invalidate the Governor's action.
4. Tompkins's twenty-three-year stay on death row did not constitute cruel and unusual punishment under the Eighth Amendment.
5. The trial court properly summarily denied Tompkins's claim based on Kimberly Quillin's affidavit because the affidavit had, at most, minimal impeachment value and was not evidence that would probably produce an acquittal or a less severe sentence.
6. Ineffective assistance of postconviction counsel is not a cognizable basis for postconviction relief in Florida.

7. Florida law does not recognize Tompkins's freestanding actual-innocence claim under the Eighth Amendment, and Tompkins failed even to satisfy the applicable newly discovered evidence standard or the federal actual-innocence threshold.
8. The trial court properly denied Tompkins's requests for additional records from FDLE and DOC because the requested records were not relevant to a Rule 3.851 proceeding and were not reasonably calculated to lead to admissible evidence.
9. The newly disclosed statement by Kenneth Turco did not require relinquishment of jurisdiction or an evidentiary hearing because, even assuming that the prosecution knowingly presented false testimony concerning the victim's purse, the allegedly false testimony was harmless beyond a reasonable doubt and could not have affected the verdict.

KEY QUOTATIONS

“To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements: First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial.” (1086-87)

“We reject this claim. In Rutherford, this Court rejected the claim that Florida's failure to recognize a freestanding actual innocence claim violates the Eighth Amendment.” (1089)

“Even if the State knowingly presented false testimony about Tompkins telling Turco that he buried Lisa DeCarr's pocketbook, there is no reasonable possibility that it could have affected the jury's verdict and would thus be harmless beyond a reasonable doubt.” (1092)

FACTUAL BACKGROUND

Tompkins was convicted of strangling fifteen-year-old Lisa DeCarr in 1985 and received a death sentence based on a unanimous jury recommendation. The State's principal evidence included testimony from the victim's mother, Kathy Stevens, who said she saw Tompkins attacking Lisa, and jailhouse informant Kenneth Turco, who testified that Tompkins confessed. In later postconviction proceedings, Tompkins relied on alleged impeachment evidence, public records, an affidavit from Kimberly Quillin, a police report, an ABA report concerning Florida's death-penalty system, and a later statement by Turco concerning testimony about the victim's purse. The Supreme Court concluded that none of those matters entitled Tompkins to relief or an evidentiary hearing.

PROCEDURAL HISTORY

Tompkins was convicted of first-degree murder and sentenced to death in 1985. His conviction and sentence had previously been affirmed, and he had pursued multiple state and federal postconviction proceedings. The trial court summarily denied his fourth successive motion, which challenged lethal injection and relied on an ABA report, and his fifth successive motion, which raised public-records, execution-rescheduling, prolonged death-row incarceration, newly discovered evidence, ineffective assistance of postconviction counsel, and actual-innocence claims. The Supreme Court of Florida affirmed those orders and denied his all-writs and habeas

petition; it also declined to relinquish jurisdiction concerning a newly disclosed statement by prosecution witness Kenneth Turco.

DISPOSITION

affirmed

CASES CITED

- Lightbourne v. McCollum, 969 So. 2d 326 (Fla. 2007)
- Baze v. Rees, 553 U.S. 35 (2008)
- Power v. State, 992 So. 2d 218 (Fla. 2008)
- Rolling v. State, 944 So. 2d 176 (Fla. 2006)
- Rutherford v. State, 940 So. 2d 1112 (Fla. 2006)
- Booker v. State, 969 So. 2d 186 (Fla. 2007)
- Jones v. State, 709 So. 2d 512 (Fla. 1998)
- Jones v. State, 591 So. 2d 911 (Fla. 1991)
- McLin v. State, 827 So. 2d 948 (Fla. 2002)
- Lambrix v. State, 698 So. 2d 247 (Fla. 1996)
- Gonzalez v. State, 990 So. 2d 1017 (Fla. 2008)
- House v. Bell, 547 U.S. 518 (2006)
- Schlup v. Delo, 513 U.S. 298 (1995)
- Giglio v. United States, 405 U.S. 150 (1972)
- Rhodes v. State, 986 So. 2d 501 (Fla. 2008)
- Guzman v. State, 941 So. 2d 1045 (Fla. 2006)
- Tompkins v. State, 980 So. 2d 451 (Fla. 2007)
- Tompkins v. State, 872 So. 2d 230 (Fla. 2003)
- State v. Ruiz, 863 So. 2d 1205 (Fla. 2003)