

SUPREME COURT OF FLORIDA

Herring v. State

501 So. 2d 1279 (Fla. 1986) · No. No. 67524 · Decided December 30, 1986

SUMMARY

The Supreme Court of Florida affirmed the denial, without an evidentiary hearing, of Ted Herring's Florida Rule of Criminal Procedure 3.850 motion. The court held that most claims were procedurally improper because they were raised or could have been raised on direct appeal, rejected Herring's proportionality and ineffective-assistance claims, and upheld the capital sentencing statute against his constitutional challenge.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	McDonald, C.J.; Adkins, J.; Boyd, J.; Overton, J.; Ehrlich, J.; Shaw, J.; Barkett, J.
JURISDICTION	Florida
DECIDED	December 30, 1986
DOCKET	No. 67524
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the trial court's denial, without an evidentiary hearing, of Herring's motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850.
STANDARD OF REVIEW	The court reviewed the denial of Rule 3.850 post-conviction relief and the determination that the ineffective-assistance claims did not warrant an evidentiary hearing.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Florida
PARTIES	Ted Herring v. State of Florida

TOPICS

- state post-conviction relief
- post-conviction relief
- sentencing
- ineffective assistance
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

capital sentencing

ineffective assistance of counsel

appellate procedure

QUESTIONS PRESENTED

1. Whether claims that were raised or could have been raised on direct appeal may be relitigated in a Rule 3.850 post-conviction motion.
2. Whether Herring's death sentence was disproportionate under *Caruthers v. State*.
3. Whether Herring was entitled to an evidentiary hearing on his ineffective-assistance-of-counsel claims.
4. Whether Florida's capital sentencing statute was discriminatorily applied.

HOLDINGS

1. A Rule 3.850 motion may not be used as a second appeal to consider issues that were raised or could have been raised on the initial direct appeal.
2. Herring's claim that his death sentence was disproportionate and that *Caruthers* required a life sentence was without merit.
3. Herring was not entitled to an evidentiary hearing because his ineffective-assistance claims did not satisfy the governing *Strickland* and *Knight* standards.
4. Herring's claim that Florida's capital sentencing statute was discriminatorily applied was rejected.

KEY QUOTATIONS

"As we have previously stated, a 3.850 motion cannot be utilized for a second appeal to consider issues that either were raised or could have been raised in the initial appeal." (501 So. 2d at 1280)

FACTUAL BACKGROUND

Herring was convicted and sentenced to death for robbing and killing a convenience-store clerk. The evidence showed that Herring shot the clerk once after perceiving a threatening move and shot him again after he hit the ground. Herring had a prior robbery conviction, and the record included evidence that he killed the victim to eliminate him as a witness.

PROCEDURAL HISTORY

Herring was convicted and sentenced to death for robbing and killing a convenience-store clerk, and the Supreme Court of Florida affirmed the conviction and sentence on direct appeal. He then sought post-conviction relief under Rule 3.850, raising claims that either had been or could have been raised on direct appeal, along with proportionality, ineffective-assistance, and discriminatory-application claims. The trial court denied relief without an evidentiary hearing, and the Supreme Court of Florida affirmed.

DISPOSITION

affirmed

CASES CITED

- Herring v. State, 446 So. 2d 1049 (Fla. 1984)
- Sireci v. State, 469 So. 2d 119 (Fla. 1985)
- Jones v. State, 446 So. 2d 1059 (Fla. 1984)
- Demps v. State, 416 So. 2d 808 (Fla. 1982)
- Caruthers v. State, 465 So. 2d 496 (Fla. 1985)
- Tafero v. State, 459 So. 2d 1034 (Fla. 1984)
- Sullivan v. State, 441 So. 2d 609 (Fla. 1983)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Knight v. State, 394 So. 2d 997 (Fla. 1981)
- Smith v. State, 457 So. 2d 1380 (Fla. 1984)
- Adams v. State, 449 So. 2d 819 (Fla. 1984)