

SUPREME COURT OF FLORIDA

Hertz v. State

941 So. 2d 1031 (Fla. 2006) · No. SC05-59 · Decided June 22, 2006

SUMMARY

The Supreme Court of Florida reviews the denial of Guerry Wayne Hertz's motion for postconviction relief under Florida Rule of Criminal Procedure 3.851. Hertz alleged that trial counsel was ineffective during the penalty phase for failing to present additional mental-health mitigation. The court held that counsel's investigation and strategic decisions were reasonable and affirmed the denial of relief.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Pariente, C.J.; Wells, J.; Anstead, J.; Lewis, J.; Quince, J.; Cantero, J.; Bell, J.
JURISDICTION	Florida
DECIDED	June 22, 2006
DOCKET	SC05-59
DISPOSITION	affirmed
PROCEDURAL POSTURE	A death-sentenced prisoner appealed the circuit court's denial of his motion for postconviction relief under Florida Rule of Criminal Procedure 3.851, asserting ineffective assistance of trial counsel during the penalty phase.
STANDARD OF REVIEW	Ineffective-assistance claims are mixed questions of law and fact subject to plenary review under Strickland, with deference to the trial court's factual findings and great deference to its credibility determinations and evidentiary weight assessments when supported by competent, substantial evidence.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; precedential.
PARTIES	Guerry Wayne Hertz v. State of Florida

TOPICS

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

PRACTICE AREAS

capital postconviction relief

criminal procedure

ineffective assistance of counsel

death penalty sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to present Dr. Sesta's opinions concerning alleged frontal-lobe deficits and diminished capacity during the penalty phase.
2. Whether trial counsel rendered ineffective assistance by failing to investigate and present additional evidence of extreme mental or emotional disturbance and other mental-health mitigation.
3. Whether trial counsel rendered ineffective assistance by failing to present a mental-age mitigator based on Dr. Mosman's postconviction testimony.
4. Whether trial counsel failed to investigate or present available nonstatutory mitigation concerning rehabilitation, genetic defects, brain damage, the effects of Hertz's clubfoot, family deafness, and drug and alcohol abuse.
5. Whether counsel's method of presenting mitigation, including the failure to enumerate each mitigator separately in opening and closing arguments, constituted ineffective assistance.

HOLDINGS

1. Counsel was not ineffective for declining to call Dr. Sesta during the penalty phase because the decision was a reasonable strategic choice supported by Dr. Sesta's poor performance on cross-examination and the limited and qualified nature of his opinions.
2. Counsel was not ineffective where counsel conducted a thorough investigation into Hertz's mental-health and life history and presented mitigation through the selected expert and lay witnesses, even though a postconviction expert offered more favorable opinions.
3. Counsel was not ineffective for failing to present Dr. Mosman's postconviction opinion that Hertz had a mental age of fourteen because counsel reasonably relied on the pretrial expert evaluation and was unaware of that theory, and the trial court found Dr. Mosman's testimony unpersuasive.
4. Counsel was not ineffective because the asserted nonstatutory mitigation was either presented during the penalty phase, considered by the sentencing court, or unsupported by credible evidence.
5. Counsel was not ineffective for presenting mitigation through an extensive background-history book, witness testimony, and argument rather than separately enumerating every statutory and nonstatutory mitigating circumstance.

KEY QUOTATIONS

“Hertz has failed to satisfy the burden required by Strickland.” (1045)

“Therefore, we affirm the denial of postconviction relief under rule 3.851.” (1045)

FACTUAL BACKGROUND

Hertz was convicted of murdering Melanie King and Robin Keith Spears during an armed burglary, robbery, and arson, and the trial court imposed two death sentences after finding seven aggravating factors and statutory and nonstatutory mitigation. At the penalty phase, counsel presented lay and expert evidence concerning Hertz's ADHD, difficult childhood, clubfoot, family history of deafness, drug abuse, and other background circumstances. In postconviction proceedings, Hertz presented Dr. Bill Mosman, who offered more favorable opinions concerning organic brain damage, mental age, and mental-health mitigation, while the trial court found his testimony unconvincing.

PROCEDURAL HISTORY

Hertz was convicted of two first-degree murders and related offenses and sentenced to death. The Florida Supreme Court affirmed the convictions and death sentences on direct appeal, and the United States Supreme Court denied certiorari. Hertz then filed a Rule 3.851 motion and amended motion; after a Huff hearing and an evidentiary hearing concerning alleged failures to present mental-health mitigation, the circuit court denied relief. The Florida Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hertz v. State, 803 So. 2d 629, 635-638, 654 (Fla. 2001)
- Hertz v. Florida, 536 U.S. 963, 122 S. Ct. 2673, 153 L. Ed. 2d 846 (2002)
- Strickland v. Washington, 466 U.S. 668, 687, 689-690, 694 (1984)
- Downs v. State, 453 So. 2d 1102 (Fla. 1984)
- Maxwell v. Wainwright, 490 So. 2d 927, 932 (Fla. 1986)
- Stephens v. State, 748 So. 2d 1028, 1032-1033 (Fla. 1999)
- Arbelaez v. State, 898 So. 2d 25, 32 (Fla. 2005)
- Sochor v. State, 883 So. 2d 766, 781 (Fla. 2004)
- Porter v. State, 788 So. 2d 917, 923 (Fla. 2001)
- Howell v. State, 877 So. 2d 697, 703 (Fla. 2004)
- Occhicone v. State, 768 So. 2d 1037, 1048 (Fla. 2000)
- Asay v. State, 769 So. 2d 974, 986 (Fla. 2000)
- Davis v. State, 875 So. 2d 359, 371 (Fla. 2003)
- State v. Lara, 581 So. 2d 1288, 1289 (Fla. 1991)
- Jackson v. Dugger, 547 So. 2d 1197, 1200 (Fla. 1989)
- State v. Sireci, 502 So. 2d 1221, 1223 (Fla. 1987)
- Heiney v. State, 620 So. 2d 171, 172 (Fla. 1993)
- Huff v. State, 622 So. 2d 982 (Fla. 1993)
- Rutherford v. State, 727 So. 2d 216, 222 n. 3 (Fla. 1998)

- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)

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