

SUPREME COURT OF MISSISSIPPI

Spicer v. State

973 So. 2d 184 (Miss. 2008) · No. No. 2006-DR-00625-SCT · Decided November 8, 2007

SUMMARY

The Supreme Court of Mississippi considered Fred Sanford Spicer, Jr.'s petition for post-conviction relief following his capital-murder conviction and death sentence. The court granted leave for a limited evidentiary hearing on whether trial counsel were ineffective during the penalty phase for failing to investigate and present mitigation evidence concerning Spicer's character and childhood history, while rejecting or finding procedurally barred his other claims.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Lamar, Justice; Smith, C.J.; Waller, P.J.; Diaz, P.J.; Carlson, J.; Dickinson, J.; Randolph, J.; Graves, J.; Easley, J.
JURISDICTION	Mississippi
DECIDED	November 8, 2007
DOCKET	No. 2006-DR-00625-SCT
DISPOSITION	other
PROCEDURAL POSTURE	Spicer sought post-conviction relief following affirmance of his capital-murder conviction and death sentence on direct appeal.
STANDARD OF REVIEW	To obtain post-conviction relief based on ineffective assistance of counsel, the petitioner must satisfy both deficient performance and prejudice under Strickland. Claims previously litigated or capable of being raised on direct appeal are generally barred under Mississippi's post-conviction procedural-bar statutes. A petitioner seeking an Atkins mental-retardation hearing must satisfy the evidentiary requirements established in Chase.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Fred Sanford Spicer, Jr. a/k/a Freddie Spicer, Jr. v. State of Mississippi

TOPICS

- state post-conviction relief
- ineffective assistance
- sentencing
- cruel and unusual punishment
- due process

PRACTICE AREAS

criminal law

post-conviction relief

capital punishment

ineffective assistance of counsel

constitutional law

QUESTIONS PRESENTED

1. Whether Spicer made a minimally sufficient showing of ineffective assistance of counsel during the penalty phase by alleging that counsel failed to investigate and present mitigation evidence concerning his character and childhood history.
2. Whether the remaining ineffective-assistance claims were procedurally barred, lacked deficient performance or prejudice, or had already been resolved on direct appeal.
3. Whether claims concerning shackling before the jury venire, juror misconduct, cumulative error, lethal injection, and the First Amendment were procedurally barred or meritless.
4. Whether Spicer satisfied Mississippi's requirements for an evidentiary hearing on an Atkins claim of mental retardation.

HOLDINGS

1. Spicer made a minimally sufficient showing to proceed in the trial court with an evidentiary hearing limited to whether trial counsel were ineffective for failing to investigate and present mitigating evidence concerning his character and childhood history.
2. The remaining ineffective-assistance claims did not warrant relief because they were procedurally barred, had been decided on direct appeal, or failed to establish deficient performance and prejudice.
3. Spicer was not entitled to an Atkins hearing because his expert affidavit did not state that he was not malingering or that he met the applicable definition of mental retardation, including adaptive-skill limitations.
4. The petition for post-conviction relief was granted in part and denied in part.

KEY QUOTATIONS

"PETITION FOR POST-CONVICTION RELIEF IS GRANTED IN PART AND DENIED IN PART." (973 So. 2d at 204, 211)

"The law is now well established that the Eighth and Fourteenth Amendments require that the sentencer not be precluded from considering, as a mitigating factor, any aspect of a defendant's character, record, or any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." (973 So. 2d at 190)

FACTUAL BACKGROUND

Spicer was convicted of killing Edmond Hebert, whose body was found in Hebert's trailer with severe head injuries. Spicer was apprehended driving Hebert's truck; a sword belonging to Hebert was found in the truck, and blood matching Hebert's genetic profile was found on the sword and clothing associated with Spicer. At sentencing, the defense presented only limited testimony from Spicer's mother and aunt and did not present substantial evidence concerning his character or childhood history.

PROCEDURAL HISTORY

A George County jury convicted Spicer of capital murder and imposed a death sentence. The Mississippi Supreme Court affirmed the conviction and sentence on direct appeal. In this post-conviction proceeding, the court granted relief in part by allowing Spicer to proceed in the trial court with a limited evidentiary hearing on alleged ineffective assistance during the penalty phase, while denying all other claims as procedurally barred or without merit.

DISPOSITION

other

REMAND INSTRUCTIONS

Spicer may proceed in the trial court with an evidentiary hearing limited to whether trial counsel failed to investigate and present mitigation evidence concerning his character and childhood history during the penalty phase. All other claims for relief were denied.

CASES CITED

- Spicer v. State, 921 So. 2d 292 (Miss. 2006)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Stringer v. State, 454 So. 2d 468, 477 (Miss. 1984)
- Washington v. State, 620 So. 2d 966 (Miss. 1993)
- Mohr v. State, 584 So. 2d 426, 430 (Miss. 1991)
- Foster v. State, 687 So. 2d 1124, 1129-30 (Miss. 1996)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Crawford v. State, 867 So. 2d 196, 217 (Miss. 2003)
- West v. State, 519 So. 2d 418, 426 (Miss. 1988)
- Stanley v. Zant, 697 F.2d 955, 965 (11th Cir. 1983)
- Leatherwood v. State, 473 So. 2d 964, 969-70 (Miss. 1985)
- Murray v. Maggio, 736 F.2d 279, 282 (5th Cir. 1984)
- Lockett v. State, 614 So. 2d 888, 893 (Miss. 1992)
- Irving v. State, 498 So. 2d 305 (Miss. 1986)
- Rideout v. State, 496 So. 2d 667 (Miss. 1986)
- Gilliard v. State, 446 So. 2d 590 (Miss. 1984)
- Cabello v. State, 524 So. 2d 313, 320 (Miss. 1988)
- Rushing v. State, 711 So. 2d 450, 458 (Miss. 1998)
- Branch v. State, 882 So. 2d 36, 55, 75 (Miss. 2004)
- Burns v. State, 813 So. 2d 668 (Miss. 2001)
- Turner v. State, 732 So. 2d 937, 954-55 (Miss. 1999)

- Willie v. State, 585 So. 2d 660, 681 (Miss. 1991)
- Jenkins v. State, 607 So. 2d 1171, 1182 (Miss. 1992)
- Byrom v. State, 863 So. 2d 836, 846-47 (Miss. 2003)
- Deck v. Missouri, 544 U.S. 622 (2005)
- Jordan v. State, 918 So. 2d 636, 661-62 (Miss. 2005)
- Bishop v. State, 882 So. 2d 135, 149 (Miss. 2004)
- Grayson v. State, 879 So. 2d 1008, 1020 (Miss. 2004)
- Rolling v. State, 944 So. 2d 176, 180 (Fla. 2006)
- Rutherford v. State, 926 So. 2d 1100, 1114-15 (Fla. 2006)
- Atkins v. Virginia, 536 U.S. 304, 317-21 (2002)
- Chase v. State, 873 So. 2d 1013, 1023, 1029 (Miss. 2004)
- Lynch v. State, 951 So. 2d 549 (Miss. 2007)