

Summary of SC91255, *Scott A. McLaughlin v. State of Missouri*

Appeal from the St. Louis County circuit court, Judge Steven Goldman
Argued and submitted October 5, 2011, opinion issued July 3, 2012

Attorneys: McLaughlin was represented by Melinda K. Pendergraph of the public defender's office in Columbia, (573) 882-9855; and the state was represented by James B. Farnsworth and Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man sentenced to death appeals the circuit court's denial of his request for post-conviction relief. In a 7-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment overruling the motion on all eight counts of ineffective assistance of counsel. The circuit court correctly sentenced the man to death for his first-degree murder conviction. It was not necessary for the judge to disqualify himself because imposing the death penalty does not impinge on a judge's ability to consider impartially the claims presented in a motion for post-conviction relief. The circuit court did not err in denying the man an evidentiary hearing regarding ineffective assistance of counsel because counsel's decisions were based on reasonable trial strategy. The evidence the man presented at the evidentiary hearing on his post-conviction relief motion was either cumulative to the evidence presented at trial or was inadmissible at trial. The man failed to claim the death penalty was unconstitutional on direct appeal and cannot make this claim in a post-conviction motion.

Judge Michael M. Pritchett, the presiding judge of the 36th Judicial Circuit (Butler and Ripley counties), sat in this case by special designation to fill the then-vacancy on the Court.

Facts: Scott McLaughlin was convicted of first-degree murder, forcible rape and armed criminal action for the stabbing and forced rape of Beverly Guenther. McLaughlin and Guenther dated and had lived together for several months prior to the incident. McLaughlin moved out following the end of the relationship in the spring of 2003. Guenther obtained a protective order against McLaughlin after he returned and broke into her home in October 2003. The next month, Guenther was raped and died after being stabbed repeatedly in the parking lot of her place of employment. Her body was discovered on the bank of a local river. Police located Guenther's blood in McLaughlin's car, which had been bleached and had sections of seat cushion removed. McLaughlin ultimately was found guilty of murder and sentenced to death. This Court affirmed the sentence. McLaughlin filed a motion for post-conviction relief, asserting eight claims under Rule 29.15, including disqualification of the trial court judge and ineffective assistance of counsel. The circuit court overruled all eight claims. McLaughlin appeals.

AFFIRMED.

Court en banc holds: (1) The circuit court was not clearly wrong in overruling McLaughlin's claim that the judge erred in not disqualifying himself from the Rule 29.15 motion hearing. Having the same judge at trial and during post-conviction relief proceedings, by itself, does not

amount to disqualifying bias or prejudice. *State v. Simmons* 955 S.W.2d 752, 770 (Mo. banc 1997). A trial judge imposing the death penalty does not impinge on his ability to consider impartially claims presented in a Rule 29.15 motion.

(2) The circuit court did not clearly err in overruling McLaughlin's claim that his counsel was ineffective for failing to call a neuropsychologist or psychiatrist to testify at trial. McLaughlin's counsel made a strategic decision not to seek out additional expert witnesses based on the advice of the other experts. At the Rule 29.15 evidentiary hearing, McLaughlin failed to offer any additional evidence from the neuropsychologist or psychiatrist that had not been presented by the other experts at trial.

(3) The circuit court did not clearly err in overruling McLaughlin's claim that his counsel was ineffective for failing to call three witnesses to testify regarding McLaughlin's brother. Counsel attempted to call one of the witnesses, but the trial court excluded this testimony as hearsay. The other witness' statements did not meet the hearsay exceptions and also would have been excluded. In addition, the statements would not have exonerated McLaughlin. Counsel is not ineffective for failing to present evidence that is inadmissible. *State v. Twenter*, 818 S.W.2d 628, 636 (Mo. banc 1991).

(4) The circuit court did not clearly err in overruling McLaughlin's claim that his counsel was ineffective for failing to call a DNA expert during the guilt phase of the trial. Because McLaughlin failed to allege counsel was ineffective for failing to obtain his brother's DNA until after he filed the motion, he waived this claim. It was reasonable trial strategy for counsel to focus on evidence that proved McLaughlin's innocence instead of on that which potentially incriminated the brother.

(5) The circuit court did not clearly err in overruling McLaughlin's request for an evidentiary hearing on his claim that his counsel was ineffective for submitting a general mitigating instruction instead of a specific one. Counsel made a reasonable decision of trial strategy and determined the specific instruction would have limited the jury's decision.

(6) The circuit court did not clearly err in overruling McLaughlin's request for an evidentiary hearing on his claim that his counsel was ineffective for failing to submit certain school, hospital and jail records during the penalty phase of trial. McLaughlin failed to show he was prejudiced by counsel's failure to introduce this evidence. Additionally, the evidence in the records is cumulative (repetitive) as other evidence presented during the penalty phase of trial. The circuit court also correctly overruled McLaughlin's claim that counsel failed to object to the trial court's hearsay instruction regarding the records. The records were used as a basis for McLaughlin's expert witnesses to make their conclusions.

(7) The circuit court did not clearly err in overruling McLaughlin's request for an evidentiary hearing on his claim that counsel was ineffective for failing to object to the prosecutor's closing argument during the penalty phase of trial. McLaughlin failed to prove this failure denied him a fair trial. The closing argument did not incite emotion or passion nor unduly influence or inject counsel's personal beliefs on the jury. Counsel is allowed to "send a message" during the closing argument.

(8) The circuit court did not clearly err in overruling McLaughlin's request for an evidentiary hearing on his claim that section 565.032.2(7), RSMo, the death penalty statute, is unconstitutional. Claims regarding the constitutional validity of the death penalty are to be brought on direct appeal, not in a motion for post-conviction relief. McLaughlin did not identify any reason for failing to make this claim on direct appeal.