

## **Summary of SC89343, *Earl Forrest v. State of Missouri***

Appeal from the Platte County circuit court, Judge Owens Lee Hull

**Attorneys:** Forrest was represented by Melinda K. Pendergraph of the public defender's office in Columbia, (573) 882-9855; and the state was represented by Andrew W. Hassell 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 convicted of first-degree murder and sentenced to death appeals the denial of postconviction relief. In a unanimous decision written by Judge William Ray Price Jr., the Supreme Court of Missouri holds that the circuit court did not err in denying the man relief. The man failed to show that his counsel provided ineffective assistance or that he was prejudiced by any of his counsel's actions. The man was not entitled to an evidentiary hearing on his remaining claims, two of which – relating to the method of execution and the clemency process – are premature and, therefore, are not ripe for consideration at this time.

**Facts:** A jury found Earl Forrest guilty of three counts of first-degree murder for the December 2002 shooting deaths of Harriett Smith, Michael Wells and Deputy Sheriff Sharon Joann Barnes. In accordance with the jury's recommendation, the trial court sentenced Forrest to death. This Court affirmed his convictions and sentences on direct appeal, *State v. Forrest*, 183 S.W.3d 218 (Mo. banc 2006), and he subsequently sought postconviction relief. The circuit court overruled most of his claims without an evidentiary hearing and overruled the rest after an evidentiary hearing. Forrest appeals.

### **AFFIRMED.**

**Court en banc holds:** (1) The circuit court did not err in denying relief for Forrest's counsel's failure to obtain a PET (positron emission tomography) scan of his brain. The scan would have been cumulative evidence that merely corroborated the testimony of two doctors who testified on Forrest's behalf about his brain damage, the evidence shows counsel used reasonable trial strategy in not presenting the scan, and Forrest failed to prove he was prejudiced by this decision.

(2) Evidence supports the circuit court's findings that Forrest's counsel did not render ineffective assistance in not investigating and presenting Forrest's medical records as mitigating evidence. Counsel investigated and presented mitigating evidence of Forrest's head injuries to three doctors for review, the records would have been cumulative to other evidence presented, counsel's strategy in not introducing the medical records will not be

challenged, and Forrest failed to show the medical records would have resulted in a different sentence.

(3) The record supports the circuit court's findings that Forrest's counsel's performance was not deficient in not calling three witnesses in the penalty phase of the trial. The information they would have presented would have been cumulative to other testimony presented at trial, and Forrest failed to show he was prejudiced.

(4) The evidence supports the circuit court's findings that admission of a photograph of a knife found in Forrest's possession and testimony about the knife had merit and that counsel properly did not object to the admission of this evidence. Forrest has not established the evidence was inadmissible and, especially in light of the shooting deaths, its admission had minimal impact. Forrest was not prejudiced by its admission.

(5) The motion court did not err in denying Forrest's claim that counsel should have objected to the admission of evidence of Forrest's prior convictions from California. The exhibits were admitted properly under section 490.220, RSMo 2000, which establishes the admissibility of another state's records as evidence. Section 490.130, RSMo 2000, which establishes when records of another state's judicial proceedings are given full faith and credit, does not apply here. Forrest failed to show that counsel's performance was deficient and that he was prejudiced.

(6) Trial counsel's failure to object to certain questions by the state during jury selection was not ineffective assistance. The follow-up questions were not argumentative and did not deprive Forrest of due process and, therefore, any objection to them would have lacked merit. Forrest was not prejudiced by the questions.

(7) Trial counsel's performance in not presenting the testimony of a clinical and forensic psychologist was not deficient. This Court will not challenge the circuit court's finding that the psychologist vastly underestimated the circumstances of Forrest's crimes, would alienate the jury by implying it could not analyze mitigating evidence without his testimony, and earned most of his income testifying for capital defendants and, therefore, that his testimony would not have been credible. Counsel's decision in not presenting testimony from the psychologist was strategic, and Forrest was not prejudiced.

(8) Forrest was not entitled to an evidentiary hearing on his claim about this Court's proportionality review. This Court previously has rejected the argument that this Court should maintain a database of death penalty cases, as it has and will continue to examine jury decisions to see if there is a consensus that particular circumstances make the death penalty inappropriate. This Court need not consider all similar cases because then mercy would be mandated in all similar cases; Missouri allows its prosecutors discretion in not seeking the death penalty and allows its juries discretion not to impose the death penalty, even in the most egregious cases.

(9) Forrest was not entitled to an evidentiary hearing on his claim about certain closing arguments by the state. The state's arguments were proper, and any objection by Forrest's counsel to them would have lacked merit.

(10) The circuit court did not err in denying an evidentiary hearing on Forrest's claim that his counsel should have objected to alleged improper personalization by the state during the opening statement of the trial's penalty phase. Forrest failed to plead facts that would warrant relief. A review of the state's entire opening statement shows the arguments were based on admissible evidence and did not personalize improperly by using the word "I."

(11) Forrest's claim that Missouri's method of lethal injection is unconstitutional as cruel and unusual punishment is premature and, therefore, is not ripe. As this Court previously has noted, it is unknown what method, if any, of lethal injection the state might use at a time, if any, after Forrest's right to seek relief in state and federal courts is concluded and his execution date and method are set.

(12) Forrest's claim that Missouri's clemency process is arbitrary and capricious also is not ripe, as he has not requested clemency at this time.