

Summary of SC91787, Johnny A. Johnson v. State of Missouri

Appeal from the St. Louis County circuit court, Judge Mark Seigel
Argued and submitted Sept. 19, 2012; opinion issued Nov. 20, 2012

Attorneys: Johnson was represented by Robert W. Lundt of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by 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 after the kidnapping, attempted rape and murder of a young girl appeals the circuit court's denial of the post-conviction relief he sought. In a 6-0 decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the circuit court's judgment because the man failed to prove the circuit court erred in denying him post-conviction relief.

Facts: A jury convicted Johnny A. Johnson of first-degree murder, kidnapping, attempted forcible rape and armed criminal action for the July 2003 kidnapping and murder of a girl in whose home Johnson had spent the night. He was sentenced to death and three life sentences. This Court affirmed the judgment. *State v. Johnson*, 207 S.W.3d 24 (Mo. banc 2006). He subsequently sought post-conviction relief, which the circuit court denied after an evidentiary hearing. Johnson appeals.

AFFIRMED.

Court en banc holds: (1) Johnson's trial counsel was not ineffective for not presenting certain evidence to show that Johnson suffered from a brain injury that caused him neuropsychological impairments. Trial counsel made reasonable efforts investigating Johnson's mental status, reviewing extensive mental health and school records and speaking with at least six mental health experts, one of whom conducted some neuropsychological testing, which did not suggest a significant neuropsychological impairment. Given this investigation and the fact that counsel specifically investigated the possibility that Johnson suffered from some mental disease or defect that would relieve him of responsibility for his conduct, counsel was not ineffective for failing to call a neuropsychologist. Further, given the considerable expert testimony counsel did present, counsel was not ineffective for not presenting the testimony of another doctor who did not test Johnson until two and a half years after he was convicted and sentenced to death and who never provided the court with a report of his evaluation or results, as contemplated by section 552.030.3, RSMo 2000. His testimony was of little consequence because he never diagnosed Johnson formally and failed to offer an opinion about Johnson's competency to stand trial, responsibility for the crime or capability of deliberating about the crime.

(2) Johnson's trial counsel was not ineffective for failing to investigate and present testimony from Johnson's sixth-grade teacher. Counsel's investigator left messages with two different telephone listings for the teacher's name but did not follow up because Johnson told the

investigator not to contact the teacher. The teacher was not interviewed because Johnson said she did not like him and would be unhelpful. Counsel called multiple other teachers and educational professionals to testify about Johnson's learning disabilities, his subaverage intellectual functioning, his limited education and his special education classes during both the guilt and penalty phases of the trial. Any testimony from the sixth-grade teacher would have been cumulative to that presented by other witnesses and would not have provided Johnson with a viable defense.

(3) Because he failed to raise the issue in his motion for post-conviction relief, Johnson has not preserved for appeal his claim that counsel should have presented evidence regarding his mental capacity to demonstrate he did not waive his rights under *Miranda v. Arizona* voluntarily. Even had he preserved the claim, this Court already addressed his claim of making involuntary statements to a detective. On direct appeal, this Court found the record clearly reflected the constitutional validity of Johnson's waiver of his *Miranda* rights. Counsel also was not ineffective in presenting evidence of Johnson's mental condition to support the jury instruction for determining the voluntariness of his statements. This claim is without merit because the jury was apprised fully of Johnson's mental condition, and the testimony of additional mental health experts would have been substantially cumulative of testimony already presented at trial.

(4) Johnson's claim that his trial counsel should have presented additional testimony to rebut (contradict) the testimony provided by a doctor testifying for the state fails. He did not identify a witness whom his trial counsel should have known at the time or trial, nor can he demonstrate that such a witness would have produced a viable defense. Further, some of the testimony Johnson says this unknown witness would have provided is cumulative to testimony presented by his expert witness.