

Summary of SC92101, *Terrance L. Anderson v. State of Missouri*

Appeal from the Cape Girardeau County circuit court, Judge William L. Syler
Argued and submitted Oct. 4, 2012; opinion issued June 11, 2013

Attorneys: Anderson was represented by William J. Swift of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Daniel J. McPherson 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 murder and sentenced to death appeals the circuit court's denial of his request for post-conviction relief. In a 6-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the judgment. Based on the circuit court's statements throughout the proceedings below, a reasonable person would have factual grounds to find an appearance of impropriety. As such, recusal is required. The case is remanded (sent back) for the court to sustain the man's motion for disqualification and for further proceedings.

Facts: Terrance Anderson was convicted in 2001 of two counts of first-degree murder for killing his child's maternal grandparents. He was sentenced to death for the grandmother's murder and life in prison without possibility of probation or parole for the grandfather's murder. The penalty phase was retried after this Court reversed the death sentence in Anderson's appeal of the denial of his motion for post-conviction relief, *Anderson v. State*, 196 S.W.3d 28 (Mo. banc 2006). He again was sentenced to death for that murder, and this Court affirmed. *State v. Anderson*, 306 S.W.3d 529 (Mo. banc 2010). Anderson subsequently sought post-conviction relief challenging various aspects of the penalty-phase retrial. He also asked the circuit court to order that he be transported to a medical facility for testing to determine whether he suffered from brain damage. The judge assigned to hear the post-conviction and transportation motions previously presided over Anderson's first trial, his first hearing for post-conviction relief and the penalty-phase retrial. During the hearing regarding the motion to transport, the judge made certain comments about events from Anderson's earlier proceedings. Anderson subsequently moved to disqualify the judge from proceeding over his post-conviction relief hearing, asserting the comments suggested an appearance of impropriety. Following a hearing, the circuit court overruled the motion to disqualify the judge, who later presided over the evidentiary hearing regarding the post-conviction relief motion, which the court overruled. Anderson appeals.

REVERSED AND REMANDED.

Court en banc holds: The judge erred in failing to recuse himself. Rule 2-2.11(A) requires a judge to recuse himself "in any proceeding in which the judge's impartiality might reasonably be questioned," including situations in which the judge "has a personal bias or prejudice concerning a party ... or knowledge of facts that are in dispute." The rule is not limited to actual prejudice but also requires recusal when a reasonable person would have factual grounds to find an appearance of impropriety and doubt the court's impartiality.

Based on the circuit court's statements throughout the proceedings, a reasonable person would have factual grounds to believe it relied on information gained outside the court proceeding in deciding issues in the case. The court advised the parties that it had participated in casual conversations outside of court with the foreperson of the jury in Anderson's first penalty-phase trial and that the foreperson shared reasons the first jury determined that Anderson should be sentenced to death for the grandmother's murder. Although the court expressly stated that it did not consider information from the foreperson, that the court shared the information with counsel indicates the court's belief of the foreperson's statements. The court also gave Anderson's counsel a *New Yorker* article regarding Anderson's proposed mental health expert during the hearing regarding the motion to transport. Although the court stated during the hearing regarding the motion to recuse that it would listen to any future testimony from this expert, other comments during the proceedings suggest that the court considered extrajudicial information concerning the first jury's reaction to the mental health evidence. Someone not acquainted with the judge's record of integrity, evidenced by his openness regarding his conversations with the foreperson, reasonably could believe that the judge's decision to overrule Anderson's post-conviction relief motion was influenced by the information obtained outside the judicial proceedings in Anderson's case. As such, the case is remanded for the court to sustain Anderson's motion for disqualification and for further proceedings.