Summary of SC97737, *Vincent McFadden v. State of Missouri*
Appeal from the St. Louis County circuit court, Judge David Lee Vincent III
Argued and submitted January 29, 2020; opinion issued April 14, 2020

Attorneys: McFadden was represented by William J. Swift of the public defender's office in Columbia, (573) 777-9977; the state was represented by Garrick Aplin 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 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 found guilty of murder and sentenced to death appeals the circuit court's judgment denying him postconviction relief. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. The circuit court did not clearly err in denying the man postconviction relief. Trial counsel made reasonable strategic decisions; there was no abandonment by postconviction counsel; and the man has not shown constitutional violations or prejudice resulted from decisions by either counsel or the circuit court.

Facts: Vincent McFadden was found guilty of first-degree murder and sentenced to death for acting with a codefendant in the shooting death of Todd Franklin. The judgment was reversed on appeal. During the retrial's guilt phase, the codefendant testified his previous statements that he and his brother – and not McFadden – killed Franklin were lies and McFadden actually was the second shooter. The jury again found McFadden guilty of first-degree murder and armed criminal action. During the retrial's penalty phase, the state presented evidence, in aggravation of punishment, that McFadden previously had been convicted of first-degree assault and armed criminal action for shooting at two other men; that he had killed his girlfriend's sister; and that he attempted to prevent his girlfriend from identifying him as her sister's killer. In mitigation of punishment, McFadden presented evidence from lay witnesses about his difficult upbringing and from a human development expert that his attachment disorder and childhood environment contributed to his violent behavior. The jury found five statutory aggravators and recommended McFadden be sentenced to death. The circuit court entered judgment accordingly. This Court affirmed the judgment on direct appeal, and McFadden sought postconviction relief, which the circuit court denied following an evidentiary hearing. McFadden appeals.

AFFIRMED.

Court en banc holds: (1) The circuit court did not clearly err in denying McFadden's claims regarding his codefendant's testimony. McFadden's counsel made an informed, strategic decision to call the codefendant as a witness; he failed to overcome the presumption it was reasonable trial strategy for counsel not to impeach the codefendant; and prejudice cannot result from counsel's failure to make meritless objections to the admission into evidence of letters between McFadden and the codefendant.

(2) The circuit court did not clearly err in denying McFadden's claims regarding the state's introduction of identification and fingerprint evidence. Any objections counsel could have made to such evidence would have lacked merit, and they were not ineffective for failing to do so.

(3) The circuit court did not clearly err in denying McFadden's claims that his counsel should have presented certain evidence during the penalty phase to show the victim's bad character. Counsel presented evidence the victim was involved with drugs, and introducing his court record indicating he had pleaded guilty to drug crimes would have been cumulative. McFadden has not shown counsel could have located a particular witness through reasonable investigation or that the witness's testimony would have been admissible. McFadden also has not shown such evidence would have caused the jury not to recommend death.

(4) The circuit court did not clearly err in finding McFadden's counsel were not ineffective in failing to call certain additional experts and lay witnesses in mitigation. The testimony of the additional lay witnesses would have been cumulative to evidence already presented, and they would have been subject to potentially damaging cross-examination regarding McFadden's gang involvement and responsibility in creating his town's violent culture. McFadden failed to demonstrate introducing a sociologist's findings into evidence would have produced a viable defense. Further, counsel reasonably chose not to pursue the strategy of calling a neurological expert to testify about McFadden's mental capacity because the strategy failed in his prior trials.

(5) The circuit court did not clearly err in finding counsel were reasonable in deciding not to order a particular scan of McFadden's brain after determining its potential risks outweighed its benefits. At the time, the medical community opposed use of such scans in criminal cases; counsel were concerned the state might use the results against McFadden; and the record indicates any potential benefit from conducting such a scan would have been negligible.

(6) The circuit court did not clearly err in finding counsel were not ineffective for not rebutting aggravating evidence showing McFadden's prior convictions for first-degree assault and armed criminal action. There is no reasonable probability an investigator's testimony about how the assaults occurred would have given McFadden a viable defense; evidence of a victim's medical records would not have undermined any conclusion he suffered serious physical injury as a result of the assault; and counsel were trying to limit evidence of McFadden's prior assault convictions.

(7) The circuit court did not clearly err in finding counsel used reasonable trial strategy in not presenting additional evidence to impeach the testimony of McFadden's girlfriend. The testimony of one witness would have supported the girlfriend's testimony; the testimony of another witness would have placed McFadden at the crime scene; testimony that no blood was found on the clothing McFadden was wearing when he was arrested days later would not have been helpful; and additional evidence of lighting and distance at the murder scene would have had little, if any, probative value.

(8) The circuit court did not clearly err in finding counsel were not ineffective for failing to object to certain penalty phase arguments by the state. Any objections to two of the statements would have been meritless; and three other statements were proper to help the jury understand and appreciate evidence that is likely to cause an emotional response.

(9) McFadden failed to establish he was prejudiced by the circuit court overruling his motions to compel his codefendant to answer certain questions during the postconviction relief process. He has not identified how the codefendant's answers to the questions would have impacted his claims, especially as several of the topics were established by other testimony in the record.

(10) The circuit court did not clearly err in sustaining the state's motion to recall the writ ordering McFadden's appearance at the postconviction relief evidentiary hearing. There is no Sixth Amendment right for an offender to attend a postconviction relief proceeding, which is civil and not criminal.

(11) The circuit court did not clearly err in overruling his motion to disqualify the prosecutor's office before the hearing on McFadden's motion for postconviction relief. The record indicates the prosecutor's office was impartial and had no conflict of interest in McFadden's case.

(12) The circuit court did not clearly err in denying McFadden's claims raised in a memoranda of law he filed more than four years after his amended motion for postconviction relief. The time limits of Rule 29.15 are mandatory, McFadden's additional claims were untimely, and abandonment does not encompass perceived ineffective assistance of postconviction counsel.