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Capital Punishment: Summary of Supreme Court Decisions of the 2002-2003 Term

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Summary

In its 2001-2002 term, for the first time since 1988, the Supreme Court placed substantial new restrictions on the powers to impose the death penalty. In *Ring v. Arizona*[1], it overturned a death sentence imposed by a judge, holding that defendants have a Sixth Amendment right to have a jury–not a judge–determine whether aggravating factors warrant the imposition of the death penalty. In *Atkins v. Virginia*,[2] it held that the execution of the mentally retarded is cruel and unusual punishment. In the 2002-2003 term, in *Miller-El v. Cockrell* the Court imposed an additional restriction when it decided that an African-American death row inmate should have been allowed to appeal the rejection of his contention that the jury that convicted him was screened by prosecutors in a racially biased way. In *Wiggins v. Smith*, it held that a capital defendant had been denied effective counsel. In *Sattazahn v. Pennsylvania*, the Court decided that there was no double-jeopardy bar to Pennsylvania's sentencing scheme providing for the death penalty on retrial. And in *Stanford v. Kentucky*, it denied a *habeas corpus* petition filed by Kevin Stanford which in effect upheld the execution of those who were 16 or 17 at the time of their crime (Kevin was 17 when he killed a gas station attendant).

The capital punishment decisions which were decided during the October 2002 Term involved issues concerning: (1) the standards to be used to determine whether a capital defendant should be granted a certificate of appealability in order to contest the denial of his petition for a writ of habeas corpus, (2) whether double jeopardy barred the imposition of the death penalty on the basis of aggravating and mitigating factors which an earlier jury had been unable to agree were sufficient and as a consequence, a life sentence was imposed, and (3) whether the performance of the defense attorneys at sentencing violated the accused Sixth Amendment right to effective assistance of counsel.

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[1] 536 U.S. 584 (2002).

[2] 536 U.S. 304 (2002).

In addition, the Court, by a 5-4 vote, denied a direct *habeas corpus* petition filed by convicted murderer Kevin Stanford, whose case produced the 1989 decision in *Stanford v. Kentucky*[3] upholding the execution of those who were 16 or 17 at the time of their crimes. Stanford was 17 when he killed a gas station attendant in 1981. Justice Stevens, writing for the dissenters, made it clear in this case that an internal debate is underway that could lead the Court someday–but not now-to re-examine the constitutionality of executing individuals who committed their crimes when they were juveniles. Justice Stevens cited the state response to the Court's decision in *Stanford v. Kentucky* as evidence of the same kind of trend that changed the outlook on executing the retarded.[4] Therefore with regards to the execution of juveniles, we will have to wait to see if there will be increased pressure on state legislatures to increase the execution ages, to help produce the kind of trend the Court might credit when it does take up the issue.

Miller-El v. Cockrell.[5] In 1986, Thomas Miller-El, an African-American male was convicted of murder and sentenced to death by a Texas jury. During the jury selection at trial, the prosecutors struck ten of the eleven prospective African-American jurors from the jury pool.[6] African-Americans and Caucasians were questioned differently about their views on the death penalty.[7] Most African-Americans heard a detailed account of what would happen to Miller-El when he was executed, and then they were asked whether they could vote to execute someone.[8] Only 6% of the potential Caucasian jurors heard the same information.[9] The petitioner also presented evidence of a pattern of race-based jury selection methods used by the Dallas County District Attorney's Office, including an office manual advising prosecutors to remove minority jurors.[10] The trial judge rejected Miller-El's equal protection challenge. He was found guilty and sentenced to death. While petitioner's appeal was pending, the Court established in *Batson v. Kentucky*[11] that it is unconstitutional to strike jurors solely on the basis of race and put a greater burden on the state to show that it was not engaging in such behavior by establishing a three-part

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[3] 492 U.S. 361 (1989), *petition for writ of habeas corpus denied*, 123 S.Ct. 472 (2002).

[4] *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Atkins*, the Court overturned an earlier decision which had held that the Eighth Amendment did not bar execution of the mentally retarded. It reversed its position in part on the basis of the number of states that had banned execution of the mentally retarded after the Court's initial decision. In *Thompson v. Oklahoma*, 487 U.S. 815 (1988), the Court concluded that the Eighth Amendment barred the execution of a juvenile who had not reached the age of 16. In the first *Stanford* case, the Court refused to raise the bar to 18. The dissenters felt that the trend of subsequent state activity warranted an *Atkins*-like response; a majority obviously were not ready to go that far.

[5] 123 S. Ct.1029 (2003).

[6] *Id.* at 1031.

[7] *Id.* at 1037.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 1038.

[11] 476 U.S. 79 (1986).

process for evaluating equal protection claims such as the petitioner's.[12] On remand, the trial court concluded that the petitioner failed to satisfy step one of *Batson* because the evidence did not raise an inference of racial motivation in the State's use of peremptory challenges. The Texas Court of Criminal Appeals also determined that the State would have prevailed on steps two and three because the prosecutors had offered credible, race-neutral explanations for the African-Americans excluded, i.e., their reluctance to assess, or reservations concerning, imposition of the death penalty to the extent that the petitioner could not prove purposeful discrimination.

After the petitioner's direct appeal and state *habeas corpus* petitions were denied, he filed a federal *habeas corpus* petition under 28 U.S.C. § 2254 raising a *Batson* claim and other issues. The Federal District Court denied relief and the Fifth Circuit Court of Appeals refused to issue a Certificate of Appealability (COA).[13] The Fifth Circuit noted that a COA will issue "only if the applicant has made a substantial showing of the denial of a constitutional right".[14] Moreover, it reasoned that 28 U.S.C. § 2254(d)(2) required it to presume state-court findings correct unless it determined that the findings would result in a decision which was unreasonable in light of clear and convincing evidence.

The Supreme Court held that the Fifth Circuit should have issued a COA to review the District Court's denial of *habeas corpus* relief to the petitioner because it applied more than the threshold standard required. All the petition needed to show to satisfy 28 U.S.C. § 2253(c) was that his claim "would be found debatable or wrong among jurists of reason."[15]

In a finding by the Fifth Circuit that Miller-El had failed to establish that the state court resolution of his claim was both unreasonable and contrary to clearly established federal law, the Fifth Circuit had improperly addressed the merits of the petitioner's claim rather than limiting its inquiry to whether the merits of his claim were debatable by reasonable jurists.

Justice Kennedy delivered the opinion of the Court, in which Chief Justice Rehnquist, and Justices Stevens, O'Connor, Scalia, Souter, Ginsburg, and Breyer joined. Justice Scalia filed a concurring opinion in which he reviewed the arguments on behalf of the State that made the issue of whether reasonable jurists might debate the merits of the *Batson* claim a close question. Justice Thomas dissented. He said Miller-El did not prove African-American jurors were excluded because of race.

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[12] The three-part process for evaluating claims that a prosecutor used peremptory challenges in violation of the Equal Protection Clause are: (a) a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race, (b) if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question, and (c) in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination. 476 U.S. at 96-8.

[13] Before a prisoner seeking post conviction relief under 28 U.S.C. § 2254 may appeal a district court's denial or dismissal of the petition, he must seek and obtain a certification of appealability from a circuit justice or judge. 28 U.S.C. § 2253.

[14] 28 U.S.C. § 2253(c)(2).

[15] 123 S. Ct. at 1046.

Sattazahn v. Pennsylvania.[16] David Sattazahn was convicted of first degree murder for killing a restaurant manager whom he and an accomplice were trying to rob. At the sentencing phase of his trial, Pennsylvania introduced as an "aggravating factor" the fact that he killed while perpetrating a felony. As "mitigating factors",[17] Sattazahn presented his lack of a significant history of prior convictions and his young age at the time of the crime. After 3½ hours of deliberation, the jury deadlocked: nine were against execution, and three were in favor. The judge dismissed the jury and sentenced Sattazahn to life in prison without parole as Pennsylvania law requires a judge to do whenever a death penalty jury is deadlocked. Sattazahn appealed his first degree murder conviction. However, before the appeal was decided, Sattahazn pled guilty to five different counts of burglary, one count of robbery, and one count of third degree murder (which cannot be punished by execution). Subsequently, Sattazahn won his appeal based upon a faulty jury instruction. There was a retrial and Sattazahn was convicted, and again the State sought the death penalty. This time, the State added an additional aggravating factor at the sentencing hearing: that Sattazahn had a significant history of felony convictions and the jury sentenced him to death. The petitioner argued that he should not have faced the death penalty in his second trial because the trial judge had sentenced him to life in prison following his first trial.

In a 5-4 decision, the Supreme Court upheld the death sentence. Justice Scalia delivered the opinion of the Court with respect to Parts I, II, IV, and V, in which Chief Justice Rehnquist and Justices O'Connor, Kennedy, and Thomas joined, and an opinion with respect to Part III, in which Chief Justice Rehnquist and Justice Thomas joined. Justice O'Connor filed an opinion concurring in part and concurring in the judgment. Justice Ginsburg filed a dissenting opinion, in which Justices Stevens, Souter, and Breyer joined.

The Supreme Court said in a line of cases commencing with *Bullington v. Missouri*,[18] "...the touchstone for double-jeopardy protection in capital-sentencing proceedings is whether there has been an 'acquittal.'"[19] The "petitioner here cannot establish that the jury or the court 'acquitted' him during his first capital-sentencing proceeding."[20] The Court ruled that Pennsylvania's system of requiring a default life sentence is not the same for purposes of double jeopardy as an outright acquittal of the charges.[21] "When, as in this case, the jury deadlocks in the penalty phase of a capital trial, it does not 'decide' that the prosecution has failed to prove its case for the death penalty. Rather, the jury makes no decision at all"[22] wrote Justice O'Connor in an opinion concurring with the majority.

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[16] 123 S. Ct. 732 (2003).

[17] Facts suggesting that the penalty should not be imposed.

[18] 451 U.S. 430 (1981).

[19] 123 S. Ct. at 738.

[20] *Id.* at 738-39.

[21] *Id.*.

[22] *Id.* at 743.

In the dissent, Justice Ginsburg said the issue was "genuinely debatable" but that double jeopardy should prevent Sattazahn's death sentence in the second trial.[23] She said "I recognize that this is a novel and close question: Sattazahn was not 'acquitted' of the death penalty, but his case was fully tried and the court, on its own motion, entered a final judgment–a life sentence–terminating the trial proceedings."[24] She also said the Court's decision "confronts defendants with a perilous choice, ... [I]f a defendant sentenced to life after a jury deadlock chooses to appeal her underlying conviction, she faces the possibility of death if she is successful on appeal but convicted on retrial. If , on the other hand, the defendant loses her appeal, or chooses to forgo an appeal, the final judgment for life stands."[25] In the end, she said, "a defendant in Sattazahn's position must relinquish either her right to file a potentially meritorious appeal, or her state-granted entitlement to avoid the death penalty."[26]

Wiggins v. Smith.[27] In 1989, petitioner Wiggins was convicted of capital murder by a Maryland judge and subsequently elected to be sentenced by a jury. His public defenders moved to bifurcate the sentencing, stating that they planned to prove that Wiggins did not kill the victim by his own hand and then, if necessary, to present a mitigation case. The court denied the motion. At sentencing, one of the defense attorneys told the jury in her opening statement that they would hear, among other things, about Wiggins' difficult life, but this evidence was never introduced. Before closing arguments and outside the presence of the jury, the defense attorney made a tentative overture to the court to preserve the bifurcation issue for appeal, detailing the mitigation case they as defense counselors would have presented. The lawyers for Wiggins never mentioned his life history or family background. The jury sentenced Wiggins to death, and the Maryland Court of Appeals affirmed. Represented by new counsel, Wiggins sought postconviction relief, arguing that his trial counsel had rendered ineffective assistance by failing to investigate and present mitigating evidence of his dysfunction background which included sever physical and sexual abuse he suffered at the hands of his mother and while under the care of a series of foster parents. The trial court denied the petition, and the State Court of Appeals affirmed, concluding that trial counsel had made a reasoned choice to proceed with what they considered their best defense. Subsequently, the federal district court granted Wiggins relief on his federal *habeas* petition, holding that the Maryland courts' rejection of his ineffective assistance claim involved an unreasonable application of clearly established federal law. In reversing, the Fourth Circuit found trial counsel's strategic decision to focus on Wiggins' direct responsibility to be reasonable. The Supreme Court granted *certiorari*[28] and reversed the Fourth Circuit Court of Appeals.

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[23] *Id.* at 744.

[24] *Id.* at 747.

[25] *Id.* at747-48.

[26] *Id.* at 748.

[27] 123 S. Ct. 2527 (2003).

[28] 537 U.S. 1027 (2002).

The Court said the legal principal has been established that governs claims of ineffective assistance of counsel in *Strickland v. Washington*[29] and in a 7-2 decision, held that counsel did not conduct a reasonable investigation and reversed the death sentence of Wiggins. An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.[30] To establish deficient performance, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness."[31] The Court has declined to articulate specific guidelines for appropriate attorney conduct but instead emphasized that "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms."[32] Counsel decision not to expand their investigation beyond a presentence investigation report and Baltimore City Department of Social Services records fell short of the professional standards prevailing in Maryland in 1989.[33] Standard practice in Maryland capital cases at that time included the preparation of a social history report. Although there were State funds to retain a forensic social worker, counsel chose not to commission a report. Moreover the Court concluded that Wiggins had been prejudiced by the failure to fully investigate his social history given the relative weakness of the aggravating evidence offered by the prosecution. Wiggins was therefore entitled to a new sentencing hearing.[34]

Justice Sandra Day O'Connor's opinion was joined by Chief Justice William Rehnquist and Justices John Paul Stevens, Anthony Kennedy, David Souter, Ruth Bader Ginsburg, and Stephen Breyer. Justice Antonin Scalia, with whom Justice Clarence Thomas joined, dissented.

In the past, the Court has stressed the importance of effective legal representation but has provided leeway for lawyers to conduct trials as they deemed appropriate.[35] The decisions in *Wiggins*, however, could send a strong signal to lower courts reminding them of the need for more vigilant defenses in death-penalty cases.

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[29] 466 U.S. 668 (1984).

[30] 123 S. Ct. at 2535.

[31] *Id*.

[32] *Id.*

[33] The original lawyers concentrated on trying to raise doubts about their client's guilt. Although they had some information about Wiggins' early life, they did not order the usual detailed background investigation that could be used to win sympathy from a jury. If jurors knew the ghastly details, they might well have chosen a life sentence for Wiggens, the Supreme Court majority stated.

[34] This is marked contrast to the Court's treatment of *Woodford v. Visciotti*, 537 U.S. 19 (2002) where the lower courts had conceded *Visciotti*'s ineffectiveness of counsel claim, but found no prejudice because of the relative strength of the aggravating factors in the case.

[35] *Strickland v. Washington*, 466 U.S. 668 (1984).