



Supreme Court of Georgia
Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Wednesday, November 6, 2019

10:00 A.M. Session

WHITE V. THE STATE (S19A1004)

A young man who was a juvenile when he murdered his friend to “see how it feels to kill someone,” is appealing his prison sentence to life without parole. His attorneys argue that the State should have had to prove “beyond a reasonable doubt” that the juvenile offender was “irreparably corrupt” and therefore eligible for the extreme sentence. Instead, the trial court found the youth was “irreparably corrupt” based upon a “preponderance of the evidence,” which is a lighter standard of proof.

FACTS: On Sunday, Oct. 16, 2016, the Perry Police Department in **Houston County** received a missing person's report from the father of 18-year-old Samuel Poss, saying he could not find his son. The last person known to have contact with Poss was **Dakota Lamar White**, who was 17 years old. After finding a message on his son's computer from White, asking Poss to come to his house to help him with his computer, the father had driven to White's home and asked if White knew where his son was. White told him he had seen Poss Friday night but that Poss had left his house around midnight to walk home. On Oct. 19, White's family, including his aunt and grandparents, contacted police and told them that White had confided in his mother that he and his friend, 18-year-old Brandon Warren, had killed Poss in White's car. Perry police went that night to White's home and arrested him without a warrant. In an interview that night at 11

p.m. and in another interview the following day at 5:30 a.m., White gave detailed accounts of how he and Warren had murdered Poss. White said that a month earlier, he and Warren had entered into a suicide pact. They agreed that they “might as well see how it feels to kill someone before we kill ourselves; we didn’t see no reason not to.” They decided to kill Poss because he would be an “easy” victim. White sent an online message to Poss asking if he would come to White’s house to help him with his computer. After Poss agreed, White and Warren picked Poss up in front of his house, then drove back to White’s home. Before Poss could get out of the car in White’s driveway, White said he wrapped two computer cords around Poss’s neck to strangle him while Warren stabbed Poss in the chest and stomach. White then wrapped his arm around Poss’s neck and choked him until Poss stopped breathing. White and Warren eventually drove to a wooded trail near White’s home and put the body into a creek bed and covered it with dirt and mud. They threw the knives used to kill Poss over a bridge. White told police he spent 10 hours cleaning Poss’s blood from his car. Following the confession, White led detectives to Poss’s body and the knives.

Less than a month later, a Houston County grand jury indicted White and Warren with malice murder, felony murder, concealing a death, and other crimes for the murder of Sam Poss. In separate trials, the State tried Warren first and White testified for the State at Warren’s trial. In May 2018, White was tried before a jury and found guilty on all counts. A lengthy sentencing hearing was held in August 2018, as White was a 17-year-old juvenile at the time of the crimes and the State sought a sentence of life in prison with no chance of parole. In its 2012 decision in *Miller v. Alabama*, the U.S. Supreme Court ruled that the Eighth Amendment’s prohibition of cruel and unusual punishment “forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.” Under *Miller*, a court must consider five factors before sentencing a juvenile to life without parole: 1) the offender’s age and its “hallmark features,” such as immaturity and impetuosity; 2) family and home environment; 3) legal competency; and 5) “possibility of rehabilitation.” Four years after *Miller*, the U.S. Supreme Court ruled in *Montgomery v. Louisiana* that “a hearing where ‘youth and its attendant characteristics’ are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not.” In 2016, the Georgia Supreme Court ruled in *Veal v. State* that *Miller* announced a new rule of “substantive constitutional law” that “the sentence of life without parole is disproportionate for the vast majority of juvenile offenders.” Under direction from the U.S. and Georgia Supreme Courts, lower courts now must make a specific determination on the record that a juvenile defendant belongs in a narrow class of juveniles “for whom a life-without-parole sentence is proportional under the Eighth Amendment.” Under *Veal*, in its “specific determination,” the sentencing court must find that the juvenile offender is “irreparably corrupt.”

In White’s case, following the sentencing hearing, the judge ruled in favor of the State and sentenced White to life without parole, finding that White “falls within that narrow class of juvenile murderers for whom the most severe sentence is proportional under the Eighth Amendment,” and he is “in fact irreparably corrupt. He exhibits an irretrievable depravity which forecloses any reasonable prospects for rehabilitation. Sadly, he is permanently incorrigible.” The trial court ordered that the burden of proof was on the State but that the standard of proof required was a “preponderance of the evidence” as opposed to the stricter standard of “beyond a reasonable doubt.” The trial court found that “the State has met its burden.”

ARGUMENTS: White’s attorneys argue that the trial court improperly applied *Veal v. State* by using a “preponderance of the evidence” standard in sentencing White to life without parole. “Such a standard does not create enough of a procedural safeguard to comply with the constitutional mandates of this Court and the United States Supreme Court,” the attorneys argue in briefs. “The *Miller*, *Montgomery*, and *Veal* cases emphasize that life-without-parole sentences for juveniles are to be *uncommon, exceptionally rare*, and only for those juveniles who exhibit ‘such irretrievable depravity that rehabilitation is *impossible*.’” “A preponderance of the evidence standard is too low a bar for the State; it allows a sentencing court to simply put forth the *Miller* factors and apply them without declaring that these findings were made beyond a reasonable doubt (or even by ‘clear and convincing evidence’).” “Such a low hurdle simply does not comply with *Veal*,” the attorneys argue. The trial court also erred in considering a critical piece of inadmissible evidence that came from White’s immune testimony at his co-defendant’s trial. “This evidence was used by the court in aggravation of his sentence and was specifically cited in the court’s sentencing order,” the attorneys argue. The evidence involved White’s testimony at Warren’s trial that he had done a Google search to determine the penalty for murder. Finally, White was illegally arrested from his home without a warrant and immediately interrogated, his attorneys argue. Both the arrest and his subsequent statements should have been suppressed at trial. Amicus briefs have been filed in this case agreeing with White that there are at least three constitutional bases for requiring the standard of proof be “beyond a reasonable doubt” in determining that a juvenile is “irreparably corrupt.” The amicus briefs have been filed on behalf of The Mercer Habeas Project and the Juvenile Law Center, the Southern Center for Human Rights, and Emory’s Barton Child Law and Policy Center.

The State, represented by the District Attorney’s and Attorney General’s offices, argues that the trial court did not err in sentencing White to life in prison with no possibility of parole. “The court followed the factors and guidance set forth by the United States Supreme Court and the Georgia Supreme Court,” the State argues in briefs. “Assessing these factors according to the standard of preponderance of the evidence was appropriate under law.” Although White’s attorneys argue that the trial court should have applied the “beyond a reasonable doubt” standard at his sentencing hearing, “This is contrary to settled law,” the State argues. “Due process does not require the government to prove disputed facts at sentencing beyond a reasonable doubt.” Georgia Code § 16-5-1 states that the trial court has the discretion to determine if a sentence of life with the possibility or without the possibility of parole is appropriate. “The statute does not require the court to make this determination beyond a reasonable doubt.” “The trial court rightly concluded, after considering the evidence, that the State had met its burden by a preponderance of the evidence,” the State contends. “Appellant White is irreparably corrupt, exhibits an irretrievable depravity foreclosing any prospect for rehabilitation. Appellant White is permanently incorrigible.” The trial court also did not err in taking into consideration White’s computer research regarding the penalty for murder, the State contends. Finally, the trial court did not err in admitting White’s confession because it was obtained subject to a legal arrest. Furthermore, White waived any challenge to his confession at trial.

Attorneys for Appellant (White): David Daniell, Jocelyn Daniell

Attorneys for Appellee (State): George Hartwig, III, District Attorney, Daniel Bibler, Asst. D.A., Christopher Carr, Attorney General, Beth Burton Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.

WATKINS V. BALLINGER, WARDEN (S19A1506)

A man is appealing a court's dismissal of his second petition for a "writ of habeas corpus," in which he challenged his 2001 convictions in **Floyd County** for felony murder, stalking and possession of a firearm during the commission of a crime.

FACTS: The night of Jan. 11, 2000, Rome-Floyd County 911 dispatched an ambulance to the scene of a single-vehicle crash on Highway 27. The driver, Isaac Dawkins, had been driving from Floyd College when he was fatally shot in the head by a 9 mm bullet that penetrated the rear window of his Toyota pickup truck. According to prosecutors for the State, **Joseph Watkins** had been harboring a long-simmering rage against Dawkins for dating Watkins's ex-girlfriend. Watkins and a friend, Mark Free, drove to the area of Floyd College, and either waited for Dawkins at the college or intercepted him nearby, then pursued Dawkins north on Highway 27 before shooting and killing him. The State argued that in addition to killing Dawkins, Watkins shot Dawkins's dog and dumped the body of another dog, which also had been shot, onto Dawkins's grave.

After he was convicted in Floyd County, the Georgia Supreme Court upheld his convictions in May 2003. Watkins then filed his first habeas corpus petition in April 2004. (Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated. They generally file the action, a "petition for a writ of habeas corpus," against the prison warden.) In his petition, Watkins asserted claims of actual innocence and of "ineffective assistance of trial counsel," based on cell phone evidence that showed he could not have committed the crime and his trial attorney's failure to present that evidence competently. In October 2009, the habeas court denied Watkins any relief, and the Georgia Supreme Court denied his application to appeal that decision.

In 2016, Watkins filed a second habeas petition against **Pamela Ballinger**, the warden of the Walker State Prison where he was being held, after learning that one of the jurors from his 2001 trial was interviewed on a podcast called "Undisclosed" that featured Watkins's case. Watkins alleged that in spite of the trial judge's instructions that jurors were not to investigate matters on their own, during a break in deliberations when the jury was split 10-to-2 in favor of conviction, this juror said that she drove to the area where Watkins would have been on the night of the crime, examining times and distances. She had been one of the two planning to vote to acquit based on the cell phone evidence presented at trial. But based on her extrajudicial experiment, she changed her vote from not guilty to guilty. Watkins claimed he had reasonable grounds to believe this juror conveyed the results of her investigation to the other juror who had voted to acquit, and he also changed his vote as a result. In 2014, the Georgia Innocence Project submitted an Open Records Act request to the GBI, seeking to review all records and evidence regarding Watkins's case. According to Watkins, it eventually tracked down a report showing that the caliber of bullet removed from the dog at Dawkins's grave was different from the bullet used to kill Dawkins. In his second habeas petition, Watkins asserted claims of juror misconduct and prosecutorial misconduct related to the dog evidence and the police investigation. The State filed a motion to dismiss the petition as "untimely" and "successive." The trial court granted the State's motion, and Watkins now appeals to the state Supreme Court.

ARGUMENTS: Watkins’s attorneys argue the trial court erred in dismissing his habeas petition as “untimely” and “successive.” Under Georgia Code § 9-14-42 (c) (4), in the case of a felony, a habeas petition must be filed within four years from the “date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence.” And the petitioner generally must present his claims in his first habeas petition, because any subsequent petition is limited under the law to claims “which could not reasonably have been raised in the original or amended petition.” Watkins’s attorneys argue, however, that the “egregious juror misconduct that occurred at Watkins’s trial could not reasonably have been raised until its discovery in 2016 because Watkins was entitled to presume that his jurors followed the explicit instructions of the trial court, and due diligence did not require him to investigate his jurors absent evidence of misconduct.” “First, this Court’s precedent makes clear as a matter of law that the claim is not untimely and it is unreasonable to require Watkins to have brought it in his first petition,” the attorneys argue in briefs. “Second, the specific juror misconduct in Watkins’s case was so egregious that it is especially appropriate for a second habeas petition. And third, allowing the claim in a second habeas would serve important policy interests.” “Here, there was no evidence of juror misconduct, so Watkins was not required to hunt for it to be diligent,” and his juror misconduct claim “could not reasonably have been raised in his first habeas petition.” Furthermore, requiring Watkins to unearth juror misconduct, “would be contrary to Georgia’s longstanding interest in protecting jurors from harassment,” Watkins’s attorneys argue. “Watkins can bring his prosecutorial misconduct claim in a second habeas petition,” and a “miscarriage of justice will occur if Watkins is procedurally barred from bringing his claims on the merits.”

The warden, represented by the Attorney General’s office, argues that the habeas court properly dismissed the juror misconduct claim as untimely under § 9-14-42 (c) (4) “as it was not filed within four years from the date on which the facts supporting the claim could have been discovered through the exercise of due diligence.” Once Watkins’s trial was over in 2001, he or his attorneys “could have contacted the jurors to determine whether any of them had conducted an independent investigation such as the one that forms the basis for this claim,” the State argues. As to “successiveness,” another statute – Georgia Code § 9-14-51 states that, “All grounds for relief claimed by a petitioner for a writ of habeas corpus shall be raised by a petitioner in his original or amended petition.” The habeas court correctly found that the grounds Watkins raised in his second petition reasonably could have been raised in his first petition, “as the facts and law on which they were based were in existence at that time.” The court therefore correctly dismissed the petition as “successive,” the State argues. Watkins’s “claim that he can bring his prosecutorial misconduct claim in a second habeas petition is not properly before this Court,” the State contends, “as it was not included within the scope” of this Court’s grant of Watkins’s application to appeal. Alternatively, the habeas court properly dismissed these claims as untimely and successive. It is clear that “these claims could reasonably have been raised in the first habeas petition,” the State contends. Finally, Watkins’s allegation that a miscarriage of justice will occur if he is procedurally barred from bringing his claims on the merits is not preserved for appellate review because it was not raised and ruled upon by the lower court. “As there was no ruling on this issue by the habeas court, there is nothing for this Court to review,” the State argues.

Attorneys for Appellant (Watkins): Benjamin Goldberg, Clare Gilbert, Adam McClay

Attorneys for Appellee (Warden/State): Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.