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GIARRATANO v. MURRAY

847 F.2d 1118 (4th Cir. 1988)

In *Giarratano v. Murray,* a class action suit initiated by Virginia death row inmates, the Fourth Circuit Court ruled that meaningful access to courts, for indigent death sentenced prisoners only, requires Virginia to appoint counsel to assist in state habeas corpus actions.

Legal assistance to death-row inmates in Virginia is currently provided by center-maintained law libraries, unit attorneys and attorneys appointed under Va. Code §14.1-183 (after a petition is filed and then only if a nonfrivolous claim is raised). 847 F.2d at 1119-1120. Virginia Code §§ 19.2-157 and 19.2-159 identify the duty of the trial court to appoint counsel and define indigency. Under *Giarratano,* Virginia is required to appoint counsel before an inmate has filed his state habeas corpus petition; however, appointment of counsel is limited to state habeas corpus proceedings and does not extend to either petitions for writs of certiorari or federal habeas corpus proceedings.

The Court upheld on review the district court's "well reasoned opinion" which found that "legal assistance presently available to Virginia death row inmates in state post-conviction proceedings fails to meet the Constitutional requirement of meaningful access to the courts as set fourth in *Bounds v. Smith,* 430 U.S. 817 (1977) (requiring prison authorities to assist inmates in preparation and filing of meaningful legal papers by providing adequate law libraries or assistance from legally trained personnel)." 847 F.2d at 1121.

In a majority opinion by Circuit Judge Hall, the Court rejected the State's argument based on *Pennsylvania v. Finley,* _____ U.S. _____, 107 S.Ct 1990 (1987), that there is no Constitutional right to counsel in state post-conviction proceedings. 847 F.2d at 1121. The Court distinguished the case on several grounds. "*Finley* was not a meaningful access case, nor did it address the rule enunciated in *Bounds v. Smith.* Most significantly, *Finley* did not involve the death penalty." *Id.,* at 1122. Citing *Beck v. Alabama,* 447 U.S. 625 (1980) (where the court found that there is a "significant Constitutional difference between the death penalty and lesser punishments"), *Ford v. Wainwright,* 477 U.S. 399 (1982) (where the court required "no less stringent standards than those demanded in any other aspect of a capital proceeding"), and *Booth v. Maryland,* _____ U.S. _____, 107 S.Ct. 2529 (1987) ("death is a punishment different from all other sanctions"), the Court refused to "read *Finley* as suggesting that the counsel cannot be required under the unique circumstances of post-conviction proceedings involving a challenge to the death penalty." 847 F.2d at 1122.

The Fourth Circuit denied any Constitutional basis for automatic appointment of counsel to death row inmates in federal post-conviction proceedings. 847 F.2d at 1122. Citing *Ross v. Moffitt,* 417 U.S. 600 (1974) (Supreme Court rejected claim that states must appoint counsel for indigents seeking a writ of certiorari), the court found Virginia's provision of counsel at state post-conviction proceedings, which provides briefs, transcripts and opinions to use in their federal habeas corpus proceedings, satisfies the meaningful access requirement of *Bounds.* 847 F.2d at 1122.

Circuit Judge Wilkins, in dissent, objected to this decision on two grounds: 1) it establishes "a right to appointed counsel where none is required by the Constitution" (*Id.,* at 1125), and 2) it exemplifies judicial policy-making in one of its worst cases (*Id.,* at 1124).

The United States Supreme Court granted Virginia's petition for certiorari on October 31, 1988.

APPLICATION TO VIRGINIA

The decision was not grounded in a Sixth Amendment right to counsel at state habeas, though at present, the result is functionally the same—a requirement that counsel be appointed. The difference in Constitutional basis theoretically leaves open to Virginia the option of fashioning meaningful access without counsel. The court here just ruled that the present system does not provide that. (Helen Bishop)