Capital Defense Journal

Volume 3 | Issue 1 Article 4

Fall 11-1-1990

SAFFLE v. PARKS 110 S. Ct. 1257,108 L.Ed.2d 415 (1990)

Justice Brennan stated in his dissent in *Butler*, "It is clear from our opinion in *Roberson* that we would have reached the identical conclusion had that case reached us in 1983 when Butler's conviction became final." *Id.* It is clear that the decision in *Roberson* was dictated by *Edwards*, that *Roberson* did not establish a "new rule," and that Butler should have been granted habeas relief. The Court's new standard, however, apparently established that a result is not "dictated" if one judge could erroneously but not unreasonably conclude otherwise.

Justice Brennan's dissent, joined by Justices Marshall, Blackmun and Stevens, characterized the majority holding as now requiring a defendant seeking habeas relief to show "that the state court's rejection of the constitutional challenge was *so* clearly invalid under then-prevailing legal standards that the decision could not be defended by any reasonable jurist." *Id.* at 1219 (emphasis in original). Brennan also pointed out that the majority's *broad definition* of what constitutes a "new rule," coupled with their *narrow definition* of what constitutes prior precedent "limits [a] federal court's habeas corpus function to reviewing state courts' legal analysis under the equivalent of a 'clearly erroneous' standard of review." *Id.* at 1221-22.

The *Butler* opinion clearly effects Virginia defense counsel by decreasing the effectiveness of appellate advocacy. Butler's only possible benefit to the defense community is to foster an increased sense of responsibility and professionalism on the part of trial judges and attorneys because, as of now, an entire layer of appellate review has been virtually eliminated.

Summary and analysis by:
Thomas J. Marlowe

SAFFLE v. PARKS

110 S. Ct. 1257, 108 L.Ed.2d 415 (1990)
United States Supreme Court

FACTS

Robyn Leroy Parks shot and killed Abdullah Ibrahim at an Oklahoma City gas station where Ibrahim worked. The victim died of a single chest wound. Parks told a friend that he shot Ibrahim because he feared Ibrahim would tell the police that Parks purchased gasoline with a stolen credit card.

The jury found Parks guilty of capital murder. During his penalty trial, Parks offered evidence of his background and character in an effort to show that his youth, race, school experience and broken home were mitigating factors. The trial judge instructed the jury that it must consider all mitigating circumstances proffered by Parks and that it could consider any additional mitigating circumstances found from the evidence. The judge specifically warned the jury, however, to avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factor when imposing sentence.

After deliberation, the jury found that Parks committed the murder for the purpose of avoiding or preventing a lawful arrest or prosecution and sentenced him to death. Parks exhausted his direct appeal and state collateral proceedings. He then sought federal habeas relief claiming, *inter alia*, that the trial judge's antisympathy instruction violated the eighth amendment because it effectively told the jury to disregard the type of mitigating evidence Parks presented. Both the District Court and the Court of Appeals for the Tenth Circuit denied relief. On rehearing, the Tenth Circuit reversed, holding that the antisympathy instruction was unconstitutional for the reasons advanced by Parks. The United States Supreme Court granted certiorari and reversed.

HOLDING

The Supreme Court held that Parks was not entitled to federal habeas relief because he was requesting the court to apply a "new rule" of constitutional law. (*See* case summary of *Butler v. McKellar*, Capital Defense Digest, this issue, which discusses the stark realities of the Supreme Court's "new rule" doctrine in greater detail.) In *Teague v. Lane*, 109 S. Ct. 1060 (1989), the Court held that a new rule of constitutional law will not be applied retroactively in cases on collateral review unless the rule comes within one of two narrow exceptions. *Id.* at 1075. A new rule was defined as a rule that "breaks new ground or imposes a new obligation on the States or the Federal Government" or one that "was not *dictated* by precedent existing at the time the defendant's conviction became final." *Id.* at 1070 (emphasis in original). The Court held that the relief Parks sought would indeed constitute a new rule under *Teague* because at the time the state court was considering Parks' claim, that court was not compelled by existing precedent to conclude that the antisympathy instruction violated the eighth amendment. *Saffle v. Parks*, 110 S. Ct. 1257, 1260 (1990).

Additionally, the Court held that the new rule did not fall within either of the two exceptions set forth in *Teague*. The first exception allows the retroactive application of a new rule on collateral review if the new rule "places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.'" *Teague*, 109 S. Ct. at 1073 (quoting *Mackey v. United States*, 401 U.S. 667, 692 (1971) (separate opinion of Harlan, J.)).

In *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989), the Court examined this exception in greater detail in response to Penry's claim that the eighth amendment prohibited the execution of mentally retarded individuals. The Court stated, "[i]f we were to hold that the eighth amendment prohibits the execution of mentally retarded persons such as Penry, we would be announcing a 'new rule.'" *Id.* at 2952. The Court went on to say, however, that such a new rule would meet the first *Teague* exception because, "a new rule placing a certain class of individuals beyond the State's power to punish by death is analogous to a new rule placing certain conduct beyond the State's power to punish at all." *Id.* Consequently, *Penry* expanded the first exception to include retroactive application of a new rule when the rule prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Id.*

The *Parks* court found that a new rule which held that an antisympathy instruction violated the eighth amendment would not fall within the first exception as developed by *Teague* and *Penry*. *Parks*, 110 S.Ct. at 1264. Further, after examining the second *Teague* exception, (which is discussed in more detail in the case summary of *Sawyer v. Smith*, Capital Defense Digest, this issue) the Court found that the potential unconstitutionality of an antisympathy instruction did not fall into the category of "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Id.*

ANALYSIS/APPLICATION IN VIRGINIA

Years ago, the decisions in *Lockett v. Ohio*, 438 U.S. 586 (1978) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), established that a State

may not bar the presentation, consideration or use of relevant mitigating evidence at the penalty phase of a capital trial. More recently, in *Penry*, the Court found that resolution of a claim that the Texas death penalty scheme prevented the jury from considering and giving effect to certain types of mitigating evidence, "was dictated by *Lockett* and *Eddings*," and that it therefore, did not involve the creation of a new rule under *Teague*. *Penry*, 109 S. Ct. at 2947.

Despite the fact that the *Teague* framework severely limits the scope of federal habeas review, the court's holding in *Penry* gave new hope to the capital defense community that the *Teague* standards could be met. *Penry*, required something "new" of a Texas system that had been previously approved by the Court in *Jurek v. Texas*, 428 U.S. 262 (1976), and suggested that enforcement of the broad commands set out in *Lockett* and *Eddings* would not constitute a new rule under *Teague*. However, the Court's holdings in *Parks, Butler* and *Sawyer* have effectively destroyed most of the optimism generated by *Penry*.

In support of his contention that the antisympathy instruction violated the eighth amendment, Parks argued that an antisympathy instruction was barred by *Lockett* and *Eddings* "because jurors who react sympathetically to mitigating evidence may interpret the instruction as barring them from considering that evidence altogether." *Parks*, 110 S. Ct. at 1262. The Court disagreed with Parks' argument, stating that it "misapprehends the distinction between allowing the jury to consider mitigating evidence and guiding their consideration." *Id.*

In an effort to keep from deciding Parks' constitutional challenge, the Court recharacterized his claim as one contesting the ability of a state to dictate the *manner* in which a jury may consider mitigating evidence. This enabled the majority to find that Parks' requested relief would constitute a new rule under *Teague*. The recharacterization of Parks' claim seems to have made a distinction without a difference. There is no significant difference between a jury instruction that directly limits the jury from considering and giving effect to mitigation evidence and one that achieves the same result in the course of telling the jury *how* it can consider and give effect to that evidence. Both instructions will erect barriers to a sentencer's understanding and ability to give effect to mitigation evidence. Parks may also be a sign that the Court, by using its "manner of consideration" rubric, intends to slowly dig away at established mitigation case law which, heretofore, has been a bulwark of capital defense. Because this has not yet been explicitly done, however, defense counsel should continue to insist that trials be conducted in a manner that does not permit barriers of any kind to the presentation, consideration, and use by the sentencer of any evidence proffered as a basis for a sentence less than death.

In *Parks, Butler* and *Sawyer*, the Court has taken the position that requested relief will constitute a "new rule" on collateral review unless it is absolutely compelled by an earlier case and that no other court could reasonably find otherwise. These decisions will bar federal review of many claims which allege that trials were conducted in violation of the U.S. Constitution. Consequently, it is even more important for trial attorneys to insure that additional claims are not lost by waiver and default. One way to do this is to learn *all* of the law, state and federal, upon which a defendant is entitled to rely at trial. Substantial pretrial time may be required to do this research. Constitutional claims based on existing law, properly raised and preserved, are not affected by *Teague* and its progeny.

Summary and analysis by:
Catherine M. Hobart

SAWYER v. SMITH

110 S. Ct. 2822, 111 L.Ed.2d 193 (1990)
United State Supreme Court

FACTS

Sawyer's conviction and death sentence became final in 1984 with the denial of certiorari by the United States Supreme Court. Sawyer petitioned for federal habeas corpus review on the grounds that the prosecutor's closing argument during the penalty phase of his trial diminished the jury's sense of responsibility for the capital sentencing decision in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). *Caldwell* established the rule that the eighth amendment prohibits the imposition of the death penalty by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the capital sentence rests elsewhere.

The United States District Court for the Eastern District of Louisiana and the Court of Appeals denied relief. Sawyer petitioned for rehearing, and the Court of Appeals for the Fifth Circuit affirmed. The Supreme Court granted certiorari and affirmed. Justice Kennedy wrote the 5-4 majority opinion.

HOLDING

The Court refused to address the petitioner's *Caldwell* claim, holding that *Caldwell* relief was a "new rule" decided after Sawyer's sentence became final, and therefore, unavailable to Sawyer. Under *Teague v. Lane*, 109 S. Ct. 1060 (1989), a petitioner cannot receive the retroactive benefit of a decision if such decision establishes a "new rule" and does not fall within one of two exceptions. *Teague* defined a new rule as a rule one that "breaks new ground or imposes a new obligation on the States or the Federal Government," or that "was not dictated by precedent existing at the time the defendant's conviction became final." *Id.* at 1070 (emphasis in original). The primary purpose of *Teague* is to ensure that federal habeas corpus review of state convictions holds state courts to compliance with the federal law in existence at the time a conviction becomes final.

Sawyer argued that the *Caldwell* claim was based on the heightened eighth amendment due process requirements of capital cases, and therefore, was dictated by *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586 (1978); *Gardner v. Florida*, 430 U.S. 349 (1977); and *Woodson v. North Carolina*, 428 U.S. 280 (1976). The Court rejected this argument on the grounds that the principles of heightened reliability expressed in those cases were too generalized, and further, the cases did not expressly deal with improper argument.

Sawyer also argued that the pre-*Caldwell* case, *Donnelly v. De Christoforo*, 416 U.S. 637 (1974), warned state courts about improper argument. The Supreme Court refused to recognize this argument because *Donnelly* dealt with improper argument in a non-capital fourteenth amendment "fundamental fairness" claim, and not the heightened eighth amendment reliability basis of *Caldwell*.

Two narrow exceptions exist under *Teague*. "First, a new rule should be applied retroactively if it places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.'" *Teague v. Lane*, 109 S Ct. 1060, 1073 (1989) (quoting *Mackey v. United States*, 401 U.S. 667, 675 (1971)(Harlan, J. separate opinion)). Second, a new rule will be applied retroactively if it