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I. Facts

During the evening of February 7, 1993, the defendant, Lance Antonio Chandler, Jr. ("Chandler"), Geraldine Fernandez ("Fernandez"), Dwight Wyatt ("Wyatt"), and George Boyd ("Boyd") discussed robbing Mother Hubbard's, a local convenience store.[1] After suggesting to the others that the clerk at Mother Hubbard's was "'a little bit slow' and would not give them any trouble," Chandler revealed that he knew they could secure a gun from his half-brother, Henry Chappell ("Chappell"), who was hiding a fully-loaded revolver for Chandler.[2] The group of four, together with Bernice Murphy, Chandler's girlfriend, went to Chappell's house in South Boston, Virginia, and retrieved the gun.[3] On the way to Mother Hubbard's, Wyatt inspected the gun, confirmed that it was loaded, and handed it to Chandler.[4] Chandler, Wyatt and Boyd went into the convenience store, at which point Boyd and Wyatt headed to the rear of the store to steal beer while Chandler approached the clerk, William Howard Dix ("Dix").[5] Chandler then demanded money and, when Dix did not respond, he pointed the gun at Dix, pulled the trigger, and said, "boom."[6] The gun failed to fire and Chandler pulled the trigger a second time, shooting Dix in the face.[7] Chandler, Wyatt and Boyd fled the scene, carrying a case of beer.[8]

Chandler was found guilty of capital murder during the commission of robbery.[9] At Chandler's request, defense counsel neither presented evidence nor made a closing argument during the penalty phase.[10] The jury recommended a sentence of death based on the finding that Chandler constituted a continuing threat to society.[11] At the final sentencing hearing, held pursuant to section 19.2-264.5 of the Virginia Code, Chandler decided to present some mitigating evidence.[12] The trial court confirmed the death sentence and the Supreme Court of

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1. Chandler v. Greene, No. 97-27, 1998 WL 279344, at *1 (4th Cir. May 20, 1998).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Chandler*, 1998 WL 279344, at *1.
6. *Id.* (internal quotation marks omitted).
7. *Id.* Dix did not die instantly; the bullet passed through his mouth into his neck, bruising his spinal cord and paralyzing the muscles that controlled his breathing. *Id.*
8. *Chandler*, 1998 WL 279344, at *1.
9. *Id.* at *2.
10. *Id.* at *3.
11. *Id.*, at *4.
12. *Chandler*, 1998 WL 279344, at *4.

Virginia upheld the conviction and sentence on appeal.[13]

After unsuccessfully pursuing state habeas relief, Chandler filed his federal petition for a writ of habeas corpus in the United States District Court for the Western District of Virginia on February 10, 1997.[14] This appeal followed that court's denial of relief.

On appeal Chandler alleged that (1) the district court erred in denying his claim that his Equal Protection rights were violated when the Commonwealth used three out of five peremptory challenges to remove three black jurors from the jury;[15] and (2) under the doctrine of *Strickland v. Washington*,[16] the district court erred in denying his claim of ineffective assistance of counsel.[17]

II. Holding

The United States Court of Appeals for the Fourth Circuit, held (1) Chandler failed to offer evidence that would support a finding that the Commonwealth's exercise of three of its peremptory challenges to remove three black potential jurors was racially motivated;[18] and (2) under the circumstances, assistance of counsel was not constitutionally ineffective.[19]

III. Application/Analysis in Virginia

A. Batson Claim

Chandler contended that his rights under the Equal Protection Clause of the Fourteenth Amendment were violated when the Commonwealth used three out of five peremptory challenges to remove three black potential jurors from the jury.[20] Chandler argued that the race-neutral explanations offered by the prosecution for the striking of these jurors were pretexts for unlawful discrimination.[21] The court found no violation of *Batson v. Kentucky*[22] because Chandler failed to prove that the trial court's determination that the Commonwealth struck the potential jurors for "race neutral" reasons was erroneous.[23] That one of the race-

13. *Id.* at *4-5.
14. *Id.* at *5.
15. *Id.*
16. 466 U.S. 668 (1984).
17. *Chandler*, 1998 WL 279344, at *7.
18. *Id.*
19. *Id.* at *8-*10.
20. *Id.* at *5.
21. *Chandler*, 1998 WL 279344, at *6. The state prosecutor justified the striking two of the three potential jurors because of their opposition to the death penalty. The record indicated that the third juror was struck because of his "remarkably non-communicative" attitude during voir dire. *Id.* at *6-7.
22. 476 U.S. 79 (1986).
23. *Chandler*, 1998 WL 279344, at *6-7. *See also* Batson v. Kentucky, 476 U.S. 79 (1986) (holding that the use of peremptory strikes may not be based on race). Note that even though potential jurors with reservations about the death penalty may not be *systematically* excluded, it is

neutral explanations offered was that the potential juror was "remarkably non-communicative" during voir dire serves to illustrate how simple it is for a prosecutor to manufacture a "race neutral" explanation for the use of a peremptory strike. Defense counsel must make every effort to do more than question the content of the explanations proffered by the Commonwealth. Counsel for Chandler went beyond questioning the basis of the strikes by making a successful showing that there were white potential jurors who were equally non-communicative. This approach is to be commended and encouraged.[24]

B. Ineffective Assistance of Counsel

Chandler's principal claim dealt with the failure of his attorney to conduct an investigation of mitigating evidence for the sentencing phase of the trial.[25] He claimed that this affected his decision to forgo a defense at trial such that it was not a "knowing waiver."[26]

The Fourth Circuit excused this failure to investigate, noting that the duty to make reasonable investigation found in *Strickland v. Washington*[27] can be limited by the actions of the client.[28] The court of appeals discovered no evidence of mental defect in the record, concluded that the trial judge had engaged in "careful, lengthy questioning" of Chandler, and, accordingly, rejected this ineffective assistance of counsel claim.[29]

The second prong of Chandler's ineffective assistance of counsel claim was that, after he changed his mind, defense counsel failed to present mitigating evidence that was reasonably available to the court at the final sentencing hearing.[30] The court of appeals' rejection of this claim was not responsive. The Fourth Circuit simply determined that the evidence presented at the final sentencing hearing was sufficient, in that it constituted an "accurate representation"

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permissible to exercise peremptory strikes to remove them. *Batson* is grounded only in the Fourteenth Amendment Equal Protection Clause, not the Sixth Amendment right to an impartial jury. Holland v. Illinois, 493 U.S. 474, 486-87 (1990).

24. *See* Marcus E. Garcia & James W. Miller, Jr., *Opposing Peremptory Challenges Under* Batson, CAP. DEF. DIG., vol. 4, no. 2, p.23 (1992).

25. Chandler also claimed ineffective assistance of counsel for trial counsel's failure to request an instruction explaining the concept of mitigating evidence to the jury and for trial counsel's failure to object to the trial court's refusal to inform the jury that, if given a life sentence, Chandler would not be eligible for parole for twenty-five years. These claims were rejected under concepts of well-settled law and will not be discussed in this summary.

26. *Chandler*, 1998 WL 279344, at *8.

27. 466 U.S. 668 (1984).

28. The court cited *Strickland*: "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Chandler*, 1998 WL 279344, at *8 (citation omitted).

29. *Id.* During extensive questioning by the court, "Chandler acknowledged that he understood that he had the right to present evidence and argument to the sentencing jury, that he had discussed his decision not to do so with his attorney, and that he was satisfied with his attorney's representation." *Id.*

30. *Id.*

of Chandler's life story.[31] This analysis failed to address the pivotal question; namely, whether there was reasonably available mitigation evidence that was not presented by counsel.

Defense counsel can best avoid this situation by electing to investigate, prepare, and present mitigating evidence, regardless of the defendant's original insistence on not presenting any such evidence. For many, if not all, clients facing possible death sentences who object, there is ample authority for counsel to override their wishes and pursue independent investigation.[32]

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31. *Chandler*, 1998 WL 279344, at *8. The court reasoned that the presentation of evidence was "not ineffective" because "[t]he most salient facts concerning Chandler's background, the circumstances of the murder, and Chandler's state of mind were fully presented to the court." *Id.*, at *9.

32. *See* Susan F. Henderson, *Presenting Mitigation Against the Client's Wishes: A Moral or Professional Imperative?*, CAP. DEF. DIG., vol. 6, no. 1, p. 32 (1993). *See also* Penny J. White, *When the Client Wants to Die -- Ethical Obligations of Counsel*, Continuing Legal Education Seminar, Virginia Capital Case Clearinghouse Materials (4/3/98). The language of the Virginia Code of Professional Responsibility also provides some guidance in this area. *See* Ethical Considerations 7-7 and 7-11 as well as Disciplinary Rule 7-101 (granting attorneys some leeway in using their professional judgment to make decisions regarding case strategy). In addition, the American Bar Association Standards for Criminal Justice, Standard 4-4.1(a), reads in relevant part:

> Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists *regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.*

Id. (emphasis added).