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Ramdass v. Angelone 187 F.3d 396 (4th Cir. 1999)

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Ramdass v. Angelone

187 F.3d 396 (4th Cir. 1999)

I. Facts

On September 2, 1992, Bobby Lee Ramdass ("Ramdass") shot and killed Mohammed Kayani ("Kayani") during a robbery of a "7-11" store in Fairfax County, Virginia. Ramdass entered the store ahead of his four companions and aimed his gun at Kayani, who was working behind the cash register. The other men with Ramdass included Darrell Wilson ("Wilson"), Shane Singh ("Singh"), Edward O'Connor ("O'Connor"), and Candelario Ramirez ("Ramirez"). Wilson also had a gun in his possession.¹

Wilson ordered the customers to lie down on the floor. The other three men took the customers' wallets and money from the store's cash register. At this point, Ramdass ordered Kayani to open the store's safe. Kayani tried unsuccessfully. Ramdass became angered and yelled at Kayani to open the safe. Wilson then fired a shot at one of the customers. Ramdass then shot Kayani in the head because "he took too long." Ramdass clicked his gun at the customers on the floor before he exited the store.² The men divided the robbery proceeds.³

Following a jury trial in Fairfax County, Ramdass was convicted of capital murder in the commission of an armed robbery and use of a firearm in the commission of a felony. The jury recommended a death sentence based upon the future dangerousness predicate.⁴

During the sentencing phase, the jury heard evidence of Ramdass's lengthy criminal record and his pattern of recidivism. They also heard that the Kayani murder was part of the sixth robbery in an eight-day crime spree. During their deliberations, the jury inquired whether Ramdass would be eligible for parole. The judge instructed the jury that they were not to concern themselves with what happened after the imposition of verdict.⁵

1. Ramdass v. Commonwealth, 437 S.E.2d 566, 568 (Va. 1993).

2. *Id.* Ramirez testified that Ramdass clicked the gun at the customers before leaving the store. One of the customers also heard the gun click. There was testimony at trial that the cartridges in the gun were smaller than those specified for the gun. Therefore, if the gun were pointed down, it could not be fired. *Id.*

3. *Id.*

4. Ramdass v. Angelone, 187 F.3d 396, 400 (4th Cir. 1999). See VA. CODE ANN. § 19.2-264.2 (Michie 1999).

5. *Ramdass*, 187 F.3d at 400. Defense counsel objected to the judge's instruction that jurors "should impose such punishment as they feel is just under the evidence and within the

At the sentencing hearing, defense counsel argued that the jury should not recommend the death penalty because Ramdass would be ineligible for parole under the three-strikes provision of the Virginia Code.⁶ The court sentenced Ramdass to death; the Supreme Court of Virginia affirmed the sentence.⁷

Ramdass then filed a petition for a writ of certiorari with the United States Supreme Court. Before his petition was reviewed, the Court decided *Simmons v. South Carolina*.⁸ In *Simmons*, the Court held that when a state seeks a death sentence on the basis of defendant's future dangerousness, the defendant is entitled to inform the jury that he is parole-ineligible if the only alternative sentence to death is life without the possibility of parole.⁹ In light of this decision, the Court remanded Ramdass's case to the Supreme Court of Virginia for reconsideration.¹⁰

On remand, the Supreme Court of Virginia, concluding that *Simmons* was inapposite, reaffirmed Ramdass's death sentence.¹¹ The court decided that Ramdass was eligible for parole at the time of the sentencing, because at that time he had only been convicted of two felonies. The two felonies that the court considered were a 1992 robbery of a Pizza Hut and the Kayani murder. The court did not consider a guilty verdict for a robbery of a Domino's Pizza to be a predicate offense under the statute because, although he had already been found guilty, the court had not yet entered judgment on that verdict at the time of Ramdass's sentencing for the Kayani murder.¹²

In subsequent state habeas corpus proceedings, Ramdass again argued that *Simmons* required that a capital jury be informed of a defendant's parole ineligibility. He also asserted that he was denied the reasonable assistance of a mental health expert and that his trial counsel rendered ineffective assistance because they failed to investigate and object to the appointment

instructions of the Court . . . [the jurors] are not to concern themselves with what may happen afterwards." *Id.*

6. See VA. CODE ANN. § 53.1-151(B1) (Michie 1999). Parole was abolished on January 1, 1995. VA. CODE ANN. § 53.1-165.1 (Michie 1999). Geriatric parole is available to convicted felons, except those convicted of capital murder. VA. CODE ANN. § 53.1-40.01 (Michie 1999).

7. *Ramdass*, 437 S.E.2d at 573-74.

8. 512 U.S. 154 (1994).

9. *Simmons v. South Carolina*, 512 U.S. 154, 177 (1994) (O'Connor, J., concurring).

10. *Ramdass v. Virginia*, 512 U.S. 1217 (1994).

11. *Ramdass*, 450 S.E.2d at 361 (Va. 1994).

12. *Ramdass*, 187 F.3d at 401 (citing *Smith v. Commonwealth*, 113 S.E. 707, 709 (Va. 1922)). *Smith* held that a conviction requires an entry of judgment. *Smith*, 113 S.E. at 709. *But cf.* *Jewel v. Commonwealth*, 517 S.E.2d 264, 268-69 (Va. Ct. App. 1999) (holding that, for purposes of impeachment, a conviction accrues when guilt is found rather than when sentence is imposed).

of a particular mental health expert.¹³ The Supreme Court of Virginia decided that the *Simmons* claim was not reviewable because the issue had already been decided on direct appeal.¹⁴

Ramdass then filed a petition for a writ of habeas corpus in the Eastern District of Virginia. In his petition, he alleged the following: (1) that the trial court's failure to permit the jury to consider his parole ineligibility was unconstitutional; (2) that his trial counsel rendered ineffective assistance because they failed to investigate the background of the appointed mental health expert; and (3) that his right to assistance of a mental health expert had been violated. The district court granted habeas relief based on the *Simmons* claim and dismissed the other claims. Both parties appealed.¹⁵

On appeal to the Fourth Circuit, the Commonwealth contended that the *Simmons* claim was defaulted and that *Simmons* was not applicable because Ramdass was not parole-ineligible under Virginia law. On cross-appeal, Ramdass asserted that the district court erred in dismissing the following claims:¹⁶ (1) that his due process rights were violated by the determination that he was eligible for parole at the time of his sentencing; (2) that his due process rights were violated by the denial of assistance of a mental health expert;¹⁷ (3) that he did not receive effective assistance of counsel; and (4) that his due process rights were violated by the denial of funds for expert assistance.¹⁸

13. *Ramdass*, 187 F.3d at 401. Ramdass asserted this right under both *Ake v. Oklahoma*, 470 U.S. 68 (1985) (holding that a defendant has a Fourteenth Amendment right, in some circumstances, to access to a psychiatrist), and section 19.2-264.3:1 of the Virginia Code. See VA. CODE § 19.2-264.3:1 (Michie 1999) (providing for expert assistance when defendant's mental condition is relevant to capital sentencing).

14. *Ramdass*, 187 F.3d at 402 (citing *Hawks v. Cox*, 175 S.E. 2d 271 (Va. 1970) (holding that an issue decided against defendant on direct appeal may not be considered again on post-conviction review)).

15. *Id.*

16. *Id.* at 408.

17. Ramdass's claim relating to the denial of mental health expert assistance will not be discussed at length in this summary because the court's ruling is briefly stated and provides little insight for defense counsel.

Ramdass advanced two theories challenging the district court's dismissal of this claim: (1) that the denial of expert assistance violated his rights under *Ake*, and (2) that the denial violated section 19.2-264.3:1 of the Virginia Code. *Ramdass*, 187 F.3d at 408-09. The court found that the *Ake* claim was not defaulted, as urged by the Commonwealth, because Ramdass fairly presented his claim to the state court. *Id.* Nevertheless, the court concluded that *Ake* was not implicated because (1) Ramdass did not show at trial that his mental status was at issue and (2) the Commonwealth did not use expert mental health evidence in the sentencing phase of the trial. *Id.* at 409. The court also affirmed the dismissal of Ramdass's claim based on section 19.2-264.3:1 of the Virginia Code. The court concluded that this claim was procedurally defaulted because it was based solely upon Ramdass's rights under the state statute. *Id.* See VA. CODE ANN. § 19.2-264.3:1 (Michie 1999).

18. This claim is not discussed in detail in this summary because the court dismissed it in a summary fashion. The court reasoned that because Ramdass failed to show that there

II. Holding

The United States Court of Appeals for the Fourth Circuit held that *Simmons* did not control this case because Ramdass was not ineligible for parole under Virginia law.¹⁹ The court reversed the district court's grant of habeas relief on the *Simmons* claim and affirmed denial of the other issues.²⁰

III. Analysis / Application in Virginia

A. The Commonwealth's Appeal

1. The *Simmons* Claim

Although Ramdass raised his *Simmons* claim to the Supreme Court of Virginia on three occasions (in his direct appeal of the sentence, on remand from the United States Supreme Court after the *Simmons* decision, and in his state habeas corpus petition),²¹ the Commonwealth contended that the claim was defaulted under the Anti-Terrorism and Effective Death Penalty Act of 1996.²² The court found this contention to be factually accurate, but noted that the Commonwealth's classification of Ramdass's *Simmons* claim for this purpose was "unduly narrow."²³ The Fourth Circuit considered the fact that Ramdass raised a broad *Simmons* claim in these three instances to be "compelling evidence" that the claim was not defaulted.²⁴

2. Applicability of *Simmons*

The court stated that the application of *Simmons* requires a two-step analysis.²⁵ In the first step, the Commonwealth must base its death penalty argument upon future dangerousness. Ramdass met this requirement.²⁶

was anything wrong with his counsel or his experts, he therefore failed to establish a prima facie case as to his ineffective assistance of counsel or mental health expert claims. *Ramdass*, 187 F.3d at 410. The court affirmed the district court's denial of funds for expert assistance and denial of an evidentiary hearing. *Id.*

19. *Id.* The court noted that *Simmons* only applies in cases where "state law renders the defendant legally, not merely practically, ineligible for parole." *Id.*

20. *Id.*

21. *Id.* at 402.

22. 28 U.S.C. Title 153, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub.L.No. 104-132, 110 Stat. 1214. See 28 U.S.C. § 2254(b) (barring consideration of federal habeas claims if petitioner has not exhausted state court remedies).

23. *Ramdass*, 187 F.3d at 402. The court recognized that Ramdass did not "specifically contest the parole eligibility determination in his state habeas petition," but concluded that he had preserved the claim by reason of the broader claim he did assert: that the trial court's refusal to give the jury his parole eligibility information violated his due process rights. *Id.*

24. *Id.*

25. *Id.* at 404.

26. *Id.* The Commonwealth argued that Ramdass presented a "continuing serious threat to society." *Id.*

Secondly, the only available alternative to a death sentence must be life without the possibility of parole.²⁷ The second step of the test was the major issue in this appeal.

In its analysis, the court stressed that *Simmons* requires a state-law determination of parole ineligibility rather than a common sense impossibility of parole as Ramdass urged.²⁸ The court reasoned that under Ramdass's argument any defendant who is unlikely to be paroled would be eligible for a *Simmons* instruction.²⁹ However, the court concluded that Ramdass did not satisfy the second step of the *Simmons* test because the Supreme Court of Virginia had already determined that he was not ineligible for parole at the time of the sentencing.³⁰

This reliance on a legal technicality, in effect, denied Ramdass his right to deny or explain the prosecution's evidence of future dangerousness.³¹ The court construed the determination of parole eligibility to be a legal determination, not a factual or logical question.³² In the dissenting opinion, Justice Murnaghan applied *Simmons* differently. He reasoned that *Simmons* is about access to juries, not legal technicalities.³³

B. Ramdass's Cross-Appeal

1. Supreme Court of Virginia's Interpretation of Parole Ineligibility

Ramdass argued that the Supreme Court of Virginia arbitrarily interpreted the three-strikes provision in the determination that he was eligible for parole.³⁴ The court held that this claim was procedurally defaulted

27. *Id.*

28. *Id.* at 405. The court pointed to the text in *Simmons* as requiring a state-law determination: "[W]here the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible." *Id.* (citing *Simmons*, 512 U.S. at 156). The court noted that the requirement of a state-law determination is present in several places in the text of the *Simmons* decision. *Id.*

29. *Id.* at 406.

30. *Id.* The Supreme Court of Virginia relied on *Smith* in defining what constituted a conviction. *Id.* at 404. This instance was the first time that the court cited *Smith* since the 1920s. *Id.* at 408.

31. See *id.* at 411 (Murnaghan, J., dissenting). In his dissenting opinion, Justice Murnaghan stressed that Ramdass was denied his elemental due process: "[s]plitting hairs when a man's life is at stake is not becoming to a judiciary or legal system. I do not believe that due process requires or allows such arbitrary results." *Id.* at 415. He also noted that "the scope and parameter of the *Simmons* right is a matter of federal constitutional law." *Id.* at 413. Under *Gardner v. Florida*, 430 U.S. 349 (1977), the Supreme Court held that "elemental due process requires that a defendant not be sentenced to death on the basis of information which he had no opportunity to deny or explain." *Id.* at 362.

32. *Ramdass*, 187 F.3d at 407.

33. *Id.* at 414.

34. *Id.* at 408.

because it had not been raised in state court.³⁵ The court found no merit in Ramdass's contention that the claim had been considered within the Supreme Court of Virginia's conclusion that he was parole eligible.³⁶

2. *Ineffective Assistance of Counsel Claim*

Ramdass also advanced an ineffective assistance of counsel claim. Because trial counsel failed to object to the appointment of a mental health expert who was not favorable to the defense and they did not seek assistance from another expert, Ramdass argued that he received ineffective assistance of counsel.³⁷ Under *Strickland v. Washington*³⁸ Ramdass needed to show (1) that trial counsel's representation fell below an objective standard of reasonableness and (2) that prejudice ensued.³⁹ The district court assumed, *arguendo*, that the deficiency prong was met, but concluded that this claim was defeated because Ramdass was unable to show prejudice.⁴⁰ The Fourth Circuit agreed with this reasoning, noting that the jury heard evidence from family members as well as a probation officer and that Ramdass could not "show that psychiatric testimony as to the same circumstances would produce a different result."⁴¹

IV. Epilogue

Ramdass was scheduled to be executed on November 23, 1999.⁴² Soon after he had eaten his last meal and less than three hours before his execution, the United States Supreme Court stayed the execution—the fourth stay issued by the Court in Virginia this year.⁴³ Although the grounds on which the Court issued the stay are not clear, two major issues in the petition were the jury instruction on Ramdass's eligibility for parole and his lack of an unbiased mental health expert.⁴⁴

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35. *Id.*

36. *Id.* The court stated that Ramdass's contention was too broad: "Carried to its logical conclusion, Ramdass's argument would mean that every judicial ruling carries with it an implicit, due process rubber stamp." *Id.*

37. *Id.* at 409.

38. 466 U.S. 668 (1984).

39. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

40. *Ramdass*, 187 F.3d at 410.

41. *Id.*

42. Tim McGlone, *Virginia Will Execute Record 14th Inmate If Appeal Fails*, THE VIRGINIAN-PILOT (Hampton Roads, Virginia), November 22, 1999, at A1.

43. The other defendants were: Terry Williams, on April 2; Lonnie Weeks, on September 1; and Michael Williams, on October 29. Frank Green, *Ramdass Execution Is Stayed*, RICHMOND TIMES DISPATCH, November 24, 1999, at A1.

44. *Id.*