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Roach v. Angelone 176 F.3d 210 (4th Cir. 1999)

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Roach v. Angelone

176 F.3d 210 (4th Cir. 1999)

I. Facts

Steve Edward Roach ("Roach") was convicted of capital murder and sentenced to death for the killing of Mary Ann Hughes ("Hughes"). On December 3, 1993, Hughes was at home when an intruder broke into the house. The intruder killed Hughes with a single shotgun blast to the chest, took her car and purse, and fled. Roach was spotted in Hughes's car in Blackstone, Virginia, and arrested soon thereafter. The police presented Roach with evidence implicating him as the perpetrator; Roach subsequently confessed to the crime.¹

Roach, seventeen years old at the time of the murder, was charged with murder and various other crimes in a juvenile court. The Commonwealth gave notice to the court that it intended to try Roach as an adult. The juvenile court subsequently found probable cause that Roach committed the crimes and transferred Roach's case to the circuit court. After obtaining an indictment from a grand jury, the Commonwealth tried Roach on counts of capital murder in the commission of robbery while armed with a deadly weapon, use of a firearm in the commission of murder, and robbery.² The jury found Roach guilty on all three charges. At sentencing, the judge allowed the jury to consider only the "future dangerousness" aggravating factor in making its sentencing decision.³ Roach was sentenced to death.⁴

The Supreme Court of Virginia affirmed Roach's death sentence and the United States Supreme Court denied certiorari. Roach exhausted all state collateral remedies and filed a petition for a writ of habeas corpus in the Western District of Virginia. The district court found no basis for

1. Roach v. Angelone, 176 F.3d 210-13 (4th Cir. 1999). The evidence presented by the police consisted of a deputy sheriff's sighting of Roach in Hughes's car the day after the shooting, a videotape of Roach's attempt to use Mrs. Hughes's credit card later that day, the fleeing of a man matching Roach's description when Mrs. Hughes's car was pulled over for speeding the second day after the shooting, and Roach's finger and palm prints on the interior of the automobile. *Id.*

2. These counts violated sections 18.2-31(4), 18.2-53(1), and 18.2-58 of the Virginia Code, respectively. Note that section 18.2-31(4) no longer requires use of a deadly weapon, requiring only the "willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery." VA. CODE ANN. § 18.2-31(4) (Michie 1999).

3. The Commonwealth failed, as a matter of law, to offer evidence that would support the "vileness" predicate. *Roach*, 176 F.3d at 214.

4. *Id.* at 213-14.

federal habeas relief and dismissed the petition. Roach appealed that dismissal to the United States Court of Appeals for the Fourth Circuit for consideration of the following assertions of error: (1) the proportionality review conducted by the Supreme Court of Virginia was constitutionally defective; (2) the Commonwealth failed to present sufficient evidence of future dangerousness; (3) the trial court failed to instruct the jury regarding Roach's possible parole eligibility if he were to receive a life sentence; (4) the trial court erroneously instructed the jury that its decision regarding punishment was required to be unanimous; and (5) the transfer procedure from juvenile court to circuit court for trial as an adult denied Roach his constitutionally warranted individualized assessment of maturity and moral responsibility.⁵

II. Holding

The Fourth Circuit, finding each of his five claims to be without merit, denied Roach's petition for a certificate of appealability and dismissed his appeal.⁶

5. *Id.* at 214.

6. *Id.* at 226. The court's disposition of two of Roach's claims will not be discussed further in this article. These claims will be briefly addressed below.

Roach argued for an extension of *Simmons v. South Carolina*, 512 U.S. 154 (1994) (allowing jurors to be informed of the absence of parole in life sentences in cases where parole is not an option). Roach argued, as an extension of the *Simmons* rule, that jurors should be informed that he would not be eligible for parole until after a mandatory twenty-five years imprisonment. This theory was rejected by the Fourth Circuit on the ground that all precedent since *Simmons* has rejected the argument. *Roach*, 176 F.3d at 220.

This *Simmons*-extension argument can only be raised in cases involving crimes committed before *Simmons* and has been consistently rejected by the courts. See *Keel v. French*, 162 F.3d 263 (4th Cir. 1998); *Wilson v. Greene*, 155 F.3d 396 (4th Cir.), *cert. denied*, 119 S. Ct. 536 (1998); *Arnold v. Evatt*, 113 F.3d 1352 (4th Cir. 1997). For further discussion of this type of claim, see Timothy B. Heavner, Case Note, CAP. DEF. DIG., Fall 1994, at 4 (analyzing *Simmons*, 512 U.S. 154).

Roach also argued that his transfer from juvenile court to the circuit court for trial as an adult violated his Eighth and Fourteenth Amendment rights because there was no judicial finding that Roach had the requisite maturity and moral responsibility to be tried as an adult. *Roach*, 176 F.3d at 223. Roach found support for his argument in *Stanford v. Kentucky*, which he interpreted as mandating that individualized culpability analysis take place prior to a decision to transfer a juvenile for trial as an adult in a capital offense. See *Stanford v. Kentucky*, 492 U.S. 361, 375 (1989) (concluding that the transfer statutes in question required state courts to make determinations that ensured individualized consideration of the maturity and moral responsibility of sixteen- and seventeen-year-old offenders prior to requiring the minors to stand trial as adults). In answer to this claim, the Fourth Circuit noted that under the statutes at issue in *Stanford*, the state courts were required to make culpability determinations prior to transfer. However, the court noted that *Stanford* did not proscribe Virginia from providing individual consideration in another manner or at a stage other than transfer; hence, it found Virginia's capital sentencing scheme to satisfy the constitutionally required individualized consideration through mechanisms such as the use of the defendant's age at the time of the offense as a mitigating factor by the sentencing jury. *Roach*, 176 F.3d at 223-25.

III. Analysis / Application in Virginia

The court decided each issue under the deferential standard of review mandated by section 2254(d) of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").⁷ This statute permits federal courts to grant a writ of habeas corpus on an issue adjudicated in state courts *only if* the proceedings resulted in either (1) a decision contrary to clearly established federal law or (2) a decision based upon an unreasonable determination of the facts considering the evidence presented at trial.⁸

A. Proportionality Review

Roach first claimed that his Eighth and Fourteenth Amendment rights were violated because the proportionality review conducted by the Supreme Court of Virginia was constitutionally inadequate.⁹ Virginia law requires the Supreme Court of Virginia to evaluate whether the death sentence was influenced by passion, prejudice, or any other arbitrary factor and also to consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.¹⁰ The Fourth Circuit, relying on the state court's claim that it compared this case not only with cases with similar facts resulting in sentences of death, but also those resulting in life sentences, upheld the affirmance of Roach's sentence by the Supreme Court of Virginia.¹¹ The court noted that this claim was essentially an allegation of inadequate application of state law. Such claims, the court explained, cannot be a basis for federal habeas corpus relief absent an independent violation of the Federal Constitution.¹²

Roach argued that the proportionality review conducted by the Supreme Court of Virginia violated the Due Process Clause of the Fourteenth

7. See Pub. L. No. 104-132, 110 Stat. 1214 (amending 28 U.S.C. Title 153); 28 U.S.C.A. § 2254 (West 1994 & Supp. 1999).

8. *Id.*

9. *Roach*, 176 F.3d at 215. The court recognized that Roach failed to raise this issue in his state habeas corpus proceedings. However, the court also acknowledged that procedural default is generally an affirmative defense that must be asserted by the Commonwealth. The court does have discretionary power to raise the issue *sua sponte*, but here decided not to do so; instead the court considered the claim on its merits. *Id.* at n.3.

10. VA. CODE ANN. § 17-110.1(C)(1),(2) (Michie 1999). The Supreme Court of Virginia relied upon this standard as endorsed by *Jenkins v. Commonwealth*, 423 S.E.2d 360, 371 (Va. 1992). The court summarily found Roach's sentence proportional due to the common imposition of death sentences in cases like Roach's. *Roach*, 176 F.3d at 215 n.5 (citing case compilations in *Yeatts v. Commonwealth*, 410 S.E.2d 254, 267-68 (Va. 1991); *Chichester v. Commonwealth*, 448 S.E.2d 638, 652 (Va. 1994); citing *Chandler v. Commonwealth*, 455 S.E.2d 219 (Va. 1995); *Joseph v. Commonwealth*, 452 S.E.2d 862 (Va. 1995)).

11. *Roach*, 176 F.3d at 217.

12. *Id.* at 215-16.

Amendment.¹³ To avoid arbitrary and capricious sentencing and to assure the consistent and fair application of capital punishment, the Eighth Amendment requires states to narrow the class of death eligible persons.¹⁴ Roach argued that the means employed by Virginia to narrow the class of death eligible persons is ineffective and therefore fails to satisfy the requirements of *Furman v. Georgia*¹⁵ and the Due Process Clause.¹⁶ Roach argued that the cursory proportionality review normally applied by the Supreme Court of Virginia, which had yet to result in the reversal of a death sentence, did not comport with due process because the state court failed to consider cases with similar facts in which life sentences were imposed.¹⁷ Roach concluded that this review resulted in a "rubber stamp" affirmance of death sentences which did not insure consistency or fairness in application of the death penalty.¹⁸ The Fourth Circuit, noting that proportionality review was but one mechanism by which Virginia met the challenge of *Furman*, rejected the claim.¹⁹ The court recognized that Virginia also narrowed the class of individuals eligible for the death penalty by requiring that a killing fall within the specific confines of the capital murder statute and that the jury find one of the aggravating factors beyond a reasonable doubt.²⁰

The court's analysis of this issue is significant to Virginia capital practice for three reasons. First, it is important to note that the Fourth Circuit was not required to conduct this review. The issue was procedurally defaulted by Roach's failure to raise the claim at the state level. However, the court also noted the burden on the Commonwealth to raise procedural default as an affirmative defense, which the Commonwealth failed to do.²¹ While the court has discretion to raise procedural default *sua sponte*, it did not exercise that discretion in this case. Although the better practice is to voice all issues at the state level, it is at least worth noting that the burden

13. *Id.* at 215.

14. *Id.* at 216. See *Furman v. Georgia*, 408 U.S. 238, 313-14 (1972) (per curiam) (White, J., concurring) (holding that the death penalty constitutes cruel and unusual punishment in violation of the Eighth Amendment when applied broadly and indiscriminately).

15. 408 U.S. 238, 313-14 (1972) (per curiam) (White, J., concurring).

16. *Roach*, 176 F.3d at 215-17.

17. *Id.* at 216.

18. *Id.*

19. *Id.* at 218.

20. *Id.* at 217. These two mechanisms narrow the class of death eligible persons. During the guilt phase of a capital trial, the jury must decide if the defendant falls within the class of capital offenders defined by the capital murder statute. See VA. CODE ANN. § 18.2-31 (Michie 1999). At sentencing, the jury must unanimously find the presence of an additional aggravating factor in order to sentence a defendant to death. See VA. CODE ANN. § 19.2-264.2 (Michie 1999).

21. *Roach*, 176 F.3d at 215 n.3.

is on the Commonwealth to raise procedural default. This may allow an adjudication of claims on the merits despite the failure to raise them earlier.

Of greater importance is the Fourth Circuit's endorsement of review of both life and death cases in proportionality review.²² Past cases have been criticized as using the rubber stamp procedure alleged by Roach here, in that the state court allegedly did not consider similar cases in which the defendant received a life sentence. That was not the case here, as the Supreme Court of Virginia did consider cases similar to Roach's where a life sentence was imposed. Thus, *Roach* evidences a move in the right direction for proportionality review.

Also of significance is the Supreme Court of Virginia's statutory authorization to compile cases which are similar to the case under examination (with respect both to the crime and the defendant) when the court conducts proportionality review.²³ Although the statutory text gives the Supreme Court of Virginia discretion as to compilation, it does not grant the court discretion to make these compilations available to the lower courts.²⁴ Section 17.1-313(E), in relevant part, states that "[t]he Supreme Court [of Virginia] may accumulate the records of all capital felony cases tried within such period of time as the court may determine Such records as are accumulated shall be made available to the circuit courts."²⁵ It follows that the court must send these compilations to the circuit courts to allow them to consider proportionality of the jury-recommended sentence prior to its imposition. For an example of a motion to compel the availability of these compilations to a circuit court, please contact the Virginia Capital Case Clearinghouse.

B. Future Dangerousness

Roach next argued that the evidence advanced by the Commonwealth during the sentencing phase was inadequate to support future dangerousness as an aggravating factor warranting the death penalty.²⁶ The Fourth Circuit employed the standard drawn from *Jackson v. Virginia*,²⁷ which states that a court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements . . . beyond a reasonable doubt."²⁸ Hence, the Commonwealth had to offer evidence which could convince a rational trier

22. *Id.* at 216.

23. VA. CODE ANN. § 17.1-313(E) (Michie 1999).

24. *Id.*

25. *Id.* (emphasis supplied).

26. *Roach*, 176 F.3d at 218.

27. 443 U.S. 307 (1979).

28. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

of fact, beyond a reasonable doubt, that Roach was a future danger to society.

The Fourth Circuit considered the circumstances of Hughes's murder in finding a sufficient showing by the Commonwealth of Roach's future dangerousness.²⁹ The Supreme Court of Virginia has endorsed the notion that Virginia law allows consideration of the circumstances of the crime itself to show future dangerousness.³⁰ Hence, the courts do not limit evidence on this issue to incidents of prior criminal conduct and other historical evidence manifesting a propensity for violence.³¹ The reliance by the courts on circumstances of the crime for indicia of future dangerousness is misplaced. The "vileness" predicate requires that the jury evaluate the circumstances of the underlying offense.³² It would seem logical that vileness and future dangerousness, which were designed by the legislature to provide distinct justifications for death sentence imposition, would necessitate *separate* evidentiary showings by the Commonwealth prior to their submission to the jury.³³ In cases where future dangerousness is at issue, defense counsel should argue against the court's reliance on the circumstances of the crime alone as sufficient to warrant submission of future dangerousness to the jury based upon this logical inconsistency. In this case, the Fourth Circuit affirmed the state court's judgment by emphasizing the escalating nature of Roach's violent behavior in the months preceding the killing and the details of the crime underlying the capital conviction.³⁴

C. Unanimity in Sentencing and Effectiveness of Counsel

Roach next asserted that the portion of the jury instructions which read "any decision you make regarding punishment must be unanimous" was

29. *Roach*, 176 F.3d at 219.

30. See generally *Smith v. Commonwealth*, 248 S.E.2d 135, 149 n.4 (Va. 1978).

31. *Roach*, 176 F.3d at 218-19.

32. See VA. CODE ANN. § 19.2-264.2 (Michie 1999).

33. *Id.* The Supreme Court of Virginia relied on *Murphy v. Commonwealth*, 431 S.E.2d 48, 53 (Va. 1993), for the proposition that the facts of the capital crime itself may be enough for submission of "future dangerousness" to the jury. Note that *Murphy* may be distinguished from this case because the circumstances of *Murphy* were far more damning to the defendant than those in Roach's case in that there was more preparation, planning, and brutality in *Murphy*. The logical flaw in relying solely upon facts of the crime itself is perhaps the reason for the absence of this notion in the model jury instructions for Virginia. See VIRGINIA MODEL JURY INSTRUCTIONS CRIMINAL Inst. No. 33.122 (Michie 1998) ("[A]fter consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society . . ."). For a more detailed discussion of the erroneous application of circumstances of the crime to indicate future dangerousness, see Jason J. Solomon, *Future Dangerousness: Issues and Analysis*, 12 CAP. DEF. J. 55 (1999) (Part III this Symposium) (arguing that circumstances of the offense for which the defendant was charged are irrelevant to determination of the defendant's future dangerousness).

34. *Roach*, 176 F.3d at 219.

improper because it shifted the burden of proof to the defense and blocked jurors from properly considering mitigating evidence at sentencing.³⁵ Since Roach failed to raise this claim on direct appeal and first voiced it at a state habeas proceeding, the Supreme Court of Virginia found it to be procedurally barred.³⁶ The Fourth Circuit, finding that Roach could not show sufficient cause or prejudice to excuse the procedural default, affirmed the procedural default.³⁷ Roach argued that ineffective assistance of appellate counsel was the reason for his failure to raise the instruction issue on direct appeal.³⁸

The Fourth Circuit looked to the two pronged test articulated in *Strickland v. Washington*.³⁹ This test finds the Sixth Amendment right to counsel violated when (1) the representation was objectively unreasonable and (2) the unreasonable representation resulted in prejudice to the defendant's case.⁴⁰ To test the reasonableness of the failure to object to the unanimity instruction on direct appeal, the Fourth Circuit turned to *Mills v. Maryland*⁴¹ and *McKoy v. North Carolina*.⁴² Under these cases, instructions like the one Roach challenged are unconstitutional when used in sentencing schemes which require the jury to make specific findings as to mitigating findings. A jury instruction violates the Constitution per the test advanced by these two cases if there is a "reasonable probability" that the jury applied the instruction in such a way as to preclude its consideration of mitigating evidence.⁴³

The Virginia sentencing scheme does not require juries to make specific mitigating factor findings; instead, juries are instructed to consider *all* mitigating circumstances before making their decision.⁴⁴ Given these instructions, the court found it "unlikely" that the jury was precluded from considering mitigating evidence regardless of the problematic unanimity instruction.⁴⁵ Thus, the court found that, under *Strickland*, it was not

35. *Id.* at 221.

36. *Id.*

37. *Id.* at 222.

38. *Id.* at 221-22.

39. 466 U.S. 668 (1984).

40. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

41. 486 U.S. 367, 386 (1988) (holding that jurors could reasonably have interpreted the Maryland sentencing instruction that their findings as to mitigating circumstances had to be unanimous as precluding them from consideration of all mitigating evidence presented at sentencing).

42. 494 U.S. 433, 435 (1990) (holding that the North Carolina unanimity requirement at sentencing violated the Constitution by precluding consideration of mitigating evidence presented by the defense).

43. *Roach*, 176 F.3d at 223 (quoting *Boyde v. California*, 494 U.S. 370, 380 (1990)).

44. *Id.* at 223.

45. *Id.*

unreasonable for Roach's counsel to fail to object to the unanimity instruction.⁴⁶ Accordingly, the court held that Roach was unable to establish cause to overcome the procedural default.⁴⁷

Practical interpretation of the court's ruling on this issue suggests that defense counsel must object to this type of instruction at trial and raise the argument again on direct appeal to ensure meaningful review. The text of the instruction at issue can certainly be seen as misleading when read on its own, since it is not true that all capital sentencing decisions must be unanimous. If a jury cannot agree to impose the death penalty, the result is *not* a new penalty trial, but a life sentence.⁴⁸

IV. Epilogue

Roach was due to be executed on August 25, 1999. On August 6, 1999, the Supreme Court of Virginia stayed Roach's execution because *both* of his parents had not been notified of a court hearing, in violation of Virginia law.⁴⁹ The Supreme Court of Virginia heard argument on this question on September 15, 1999.⁵⁰ If the court finds that the failure to adequately notify Roach's parents violated state law, Roach could be awarded a new trial.

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46. *Id.*

47. *Id.*

48. VA. CODE ANN. § 19.2-264.4(E) (Michie 1999). Section 19.2-264.4(E), in relevant part, states that "[i]n the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life." *Id.*

49. In 1998, the Supreme Court of Virginia decided *Baker v. Commonwealth*, 504 S.E.2d 394 (Va. 1998), *aff'd*, 516 S.E.2d 219 (Va. 1999), which interpreted section 16.1-263 of the Virginia Code to mandate service of summonses to *both* parents of the juvenile. Meanwhile, the Virginia legislature has since amended the statute to require the notification by summons of only *one* parent. VA. CODE ANN. § 16.1-263 (Michie 1999) ("to at least one parent, guardian, or legal custodian or other person standing in loco parentis"). The Supreme Court of Virginia's interpretation of section 16.1-263 prior to its amendment raised doubts as to the sufficiency of service in juvenile cases tried under that juvenile statutory scheme.

50. Alan Cooper, *Trial Bid Cites Parental Notice 2 Death Row Inmates Seeking New Cases*, RICHMOND TIMES-DISPATCH, Sept. 16, 1999, at B7. See Ashley Flynn, 12 CAP. DEF. J. 235 (1999) (analyzing *Thomas v. Taylor*, 170 F.3d 466 (4th Cir. 1999)).