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Rocheville v. Moore,
No. 98-23, 1999 WL 140668
(4th Cir. Mar. 16, 1999)¹

David Rocheville (“Rocheville”) filed a petition for federal habeas corpus relief challenging his conviction and death sentence for the murders of Alex Hopps and James Todd Green. After the District Court granted the State’s motion for summary judgment, the United States Court of Appeals for the Fourth Circuit concluded that Rocheville had failed to show that his constitutional rights had been denied and dismissed his appeal.² Rocheville raised, and the court rejected, five ineffective assistance of counsel claims.³

Rocheville’s claim that the prosecutor impermissibly alluded during closing arguments to Rocheville’s decision not to testify, and his claim that his own counsel was ineffective for failing to raise this issue on appeal were procedurally defaulted⁴ because they had not been raised on direct appeal or during state habeas proceedings.⁵ Thus, although the United States Supreme Court has squarely held that any comment at trial on a defendant’s decision not to testify violates his Fifth Amendment right against self-incrimination,⁶ this constitutional violation will not be remedied on federal habeas review unless the issue has been preserved on direct appeal and at state habeas proceedings. Accordingly, it is imperative that issues of this kind be raised at trial and litigated throughout the entire appellate process.

Because the Supreme Court of South Carolina rejected Rocheville’s three remaining claims on their merits, the Fourth Circuit, following the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”),⁷ would not disturb these holdings unless they involved “an unreasonable

1. This is an unpublished opinion which is referenced in the “Table of Decisions Without Reported Opinions” at 175 F.3d 1015 (4th Cir. 1999).

2. Rocheville v. Moore, No. 98-23, 1999 WL 140668, at *7 (4th Cir. Mar. 16, 1999).

3. In addition, Rocheville raised three claims based upon South Carolina law, which are not discussed in this summary because of their irrelevance to Virginia capital law.

4. *Rocheville*, 1999 WL 140668, at *6.

5. Under the laws of South Carolina, the mechanism by which a prisoner can challenge his incarceration is the action for postconviction relief (PCR), which is analogous to a state habeas action. See *id.*, at *1.

6. *Griffin v. California*, 380 U.S. 609, 614 (1965).

7. 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.

application of clearly established Supreme Court case law.”⁸ Thus, the Fourth Circuit deferred to the South Carolina court’s resolution of several claims. The South Carolina Court had held that (1) Rocheville’s attorney had made competent attempts to deal with the problem of pre-trial publicity;⁹ (2) his attorney was not ineffective for failing to object to a police detective’s testimony about Rocheville’s invocation of his right to counsel because the testimony was not used as evidence of guilt;¹⁰ and (3) his attorney’s strategy of admitting guilt and focusing on mitigation was not unreasonable in light of Rocheville’s confession to police.¹¹ *Rocheville v. Moore* illustrates the difficulties of raising new issues and challenging state courts’ adjudications on the merits in federal habeas proceedings in light of the Fourth Circuit’s stringent procedural default rules and AEDPA.

Matthew L. Engle

8. *Id.*, at *4.

9. *Id.*, at *5.

10. *Id.*

11. *Id.*, at *6.