Capital Defense Journal

Volume 14 | Issue 1 Article 9

Fall 9-1-2001

Rose v. Lee 252 F.3d 676 (4th Cir. 2001)

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I. Facts

A North Carolina jury convicted John Hardy Rose ("Rose") of capital murder for the murder of Patricia Stewart. The jury chose to sentence Rose to death. On May 12, 1992, Rose appealed to the Supreme Court of North Carolina, which unanimously found no error in Rose's conviction or death sentence. After being denied certiorari to the United States Supreme Court, Rose filed a petition for state habeas corpus relief, which is termed a Motion for Appropriate Relief ("MAR") in North Carolina. After holding an evidentiary hearing, the MAR court denied Rose's request of relief. Rose then petitioned the United States District Court for the Western District of North Carolina for habeas relief. The petition was referred to a United States Magistrate Judge, who recommended to the district court to dismiss on summary judgment all but the ineffective assistance of counsel claim. After a de novo review, the district court agreed with the magistrate judge's recommendation and issued a writ of habeas corpus with respect to Rose's ineffective assistance of counsel claim but dismissed on all of Rose's other claims. The district court then remanded the ineffective assistance claim to the state court.[1]

Rose then sought appeal to the United States Court of Appeals for the Fourth Circuit on three issues: (1) whether his confession was illegally obtained; (2) whether the imposition of the death penalty in North Carolina unconstitutionally discriminates against the impoverished; and (3) whether the ex post facto clause bars the application of North Carolina General Statutes Section 15A-1419 to his habeas petition. The State then cross appealed claiming that the district court had erred by remanding the ineffective assistance claim to the MAR court for application of the proper legal standard.[2]

II. Holding

The Fourth Circuit reversed the portion of the district court's judgment granting the writ of habeas corpus as to the ineffective assistance of counsel claim.[3] The court affirmed the district court's entry of summary judgment in favor of the State, and declined to grant Rose a certificate of appealability.[4]

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1. Rose v. Lee, 252 F.3d 676, 682-83 (4th Cir. 2001).
2. *Id.* at 683.
3. *Id.* at 681.
4. *Id.*

III. Analysis / Application in Virginia

A. Ex Post Facto

Rose filed his MAR on October 4, 1995.[5] On June 21, 1996, the North Carolina legislature amended North Carolina General Statutes Section 15A-1419, which addresses default of claims on state collateral review.[6] This amendment made procedural bars mandatory rather than discretionary unless the petitioner can establish good cause or that the failure to consider the claim will result in a fundamental miscarriage of justice.[7] The MAR court applied the amended statutory language to several of Rose's claims and determined that the claims were procedurally barred.[8] Rose argued that this application of Section 15A-1419 as amended violated the Ex Post Facto Clause of the United States Constitution.[9]

The district court rejected Rose's claim on the merits, forcing Rose to demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.[10] Retroactive application of a procedural law can violate the Ex Post Facto Clause, but only when the law:

> (1) punishes as a crime an act previously committed, which was innocent when done; (2) makes more burdensome the punishment for a crime, after it's commission; (3) deprives one charged with crime of any defense that was available according to law at the time when the act was committed; or (4) alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender.[11]

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5. *Id.* at 683.

6. *Id.*; *see* N.C. GEN. STAT. § 15A-1419 (1999 & Supp. 2000). Section 15A-1419(b) amended the language as follows:

> (b) The court *shall deny* the motion under any of the circumstances specified in this section, unless the defendant can demonstrate:
> (1) Good cause for excusing the grounds for denial listed in subsection (a) of this section and can demonstrate actual prejudice resulting from the defendant's claim; or
> (2) That failure to consider the defendant's claim will result in a fundamental miscarriage of justice.

Id. The statute previously read:

> (b) Although the court may deny the motion under any of the circumstances specified in this section, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious.

N.C. GEN. STAT. § 15A-1419 (1978).

7. *Rose*, 252 F.3d at 683; *see* § 15A-1419; *supra* note 6.

8. *Rose*, 252 F.3d at 683.

9. *Id.*; *see also* U.S. CONST. art. I, § 9, cl. 3.

10. *Rose*, 252 F.3d at 683-684; *see* Slack v. McDaniel, 529 U.S. 473, 484 (2000) (holding that denial of a habeas petition on procedural grounds requires that the prisoner show, at least, that jurists would find district court's assessment of constitutional claims debatable or wrong).

11. *Rose*, 252 F.3d at 684 (quoting Collins v. Youngblood, 497 U.S. 37, 42 (1990) and Carmell v. Texas, 529 U.S. 513, 551 (2000)).

The Fourth Circuit found that the application of the amended language of Section 15A-1419 did not fall into any of the four categories.[12] The Fourth Circuit found Rose's ex post facto claim was barred.[13] The court noted that the United States Supreme Court has held that a law does not violate the Ex Post Facto Clause simply because it "alters the situation of a party to his disadvantage."[14]

B. Procedurally Defaulted Claims

1. Rose's Confession

Rose sought appeal on several claims that the district court found to be procedurally defaulted. In order to secure a certificate of appealability Rose had to demonstrate both (1) "'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'"[15]

Rose sought to appeal the district court's denial of his claim that his confession was unconstitutionally compelled with a promise of life imprisonment and then used to secure his death sentence.[16] It was acknowledged by Rose's attorney that this claim was not premised upon a *Miranda* violation but rather upon a promise having been made in exchange for Rose's confession.[17] Relying on *Arizona v Fulminante*,[18] the Fourth Circuit applied the "totality of the circumstances" standard to Rose's claim that his confession was unconstitutionally forced.[19] The United States Supreme Court in *Fulminante* ruled that the existence of a promise in connection with a confession does not render a confession per se involuntary.[20] The Fourth Circuit therefore declined to hold that the cryptic promise that "things would go easier" on Rose if he confessed amounted to

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12. *Id.*

13. *Id.*

14. *Id.*; *see Collins*, 497 U.S. at 48-50 (holding that the Ex Post Facto Clause is not violated simply because the party's situation is altered to his disadvantage).

15. *Rose*, 252 F.3d at 684 (quoting *Slack*, 529 U.S. at 484). *See generally* Beck v. Angelone, 261 F.3d 377, 392 (4th Cir. 2001) (holding that Beck was not entitled to certificate of appealability because he failed to establish a valid constitutional claim, the court therefore refused to address the procedural question); Damien P. DeLaney, Case Note, 14 CAP. DEF. J. 119 (2001) (analyzing Beck v. Angelone, 261 F.3d 377 (4th Cir. 2001)) (stating that the Fourth Circuit required that both prongs of the *Slack* standard be met in order to secure a certificate of appealability).

16. *Rose*, 252 F.3d at 685.

17. *Id.*

18. 499 U.S. 279 (1991).

19. *Rose*, 252 F.3d at 685; *see* Arizona v. Fulminante, 499 U.S. 279, 285-86 (1991) (holding that determination regarding the voluntariness of a confession must be viewed in totality of the circumstances).

20. *Fulminante*, 499 U.S. at 285.

unconstitutional coercion.[21] The court denied the claim without ever addressing the second prong of the appealability test because the claim failed to meet the first prong of the test.[22]

2. *Discrimination Claim*

Rose next sought to appeal the district court's denial of his claim that North Carolina unconstitutionally discriminates based upon economics in the imposition of the death penalty.[23] The district court declined to address the merits of Rose's economic discrimination claim because Rose failed to "fairly present" the issue to the state courts, so the issue was therefore procedurally barred.[24] Rose argued to the Fourth Circuit that he had established sufficient cause to overcome the procedural default of his claim, because the facts to support the claim were not readily available to Rose's counsel during the state proceedings.[25] While the court acknowledged that a petitioner can establish cause by showing that the factual information was unavailable, the court did not believe that the factual information was unavailable to Rose.[26]

C. *Ineffective Assistance of Counsel*

The State argued that the district court erred by granting a writ of habeas corpus with respect to Rose's ineffective assistance of counsel claim.[27] The district court held that the MAR court acted contrary to clearly established law when it denied Rose's ineffective assistance of counsel claim; the error was in applying the wrong burden of proof.[28] The MAR court ruled that Rose had failed to show by preponderance of the evidence that the result of the proceeding would have been different but for the ineffective assistance of counsel.[29] However, the United States Supreme Court held in *Strickland v. Washington*,[30] that the prisoner need only demonstrate a reasonable probability that the result would have been different.[31] The Fourth Circuit agreed with the district court that the decision making process by which the MAR court adjudicated Rose's ineffective

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21. *Rose*, 252 F.3d at 686.
22. *Id.* at 686 n.7.
23. *Id.* at 686-87.
24. *Id.* at 687.
25. *Id.*
26. *Id.*
27. *Id.* at 688.
28. *Id.*
29. *Id.* at 689.
30. 466 U.S. 668 (1984).
31. Strickland v. Washington, 466 U.S. 668, 694 (1984) (holding that a reasonable probability is a probability sufficient to undermine confidence in the outcome).

assistance of counsel claim was contrary to clearly established Supreme Court precedent.[32]

The Fourth Circuit disagreed with the district court about whether the district court must remand the case to the MAR court or whether the district court could review the case de novo.[33] The Fourth Circuit did not read *Williams v. Taylor*[34] as barring the district court's de novo review of Rose's ineffective assistance of counsel claim.[35] In *Williams* the United States Supreme Court found that the petitioner was denied effective assistance of counsel because his counsel failed to introduce substantial mitigating evidence to the sentencing jury.[36] The Court ruled that *Strickland* provides sufficient guidance for resolving virtually all ineffective assistance claims.[37] When a state court makes a ruling that is clearly contrary to established federal law, the federal courts have an obligation to review state court judgments independently to determine whether issuance of a writ of habeas corpus is warranted.[38] However, instead of remanding the case back to the district court for determination on whether the writ should have been issued, the Fourth Circuit chose to issue its own decision.

It is interesting to note that the court denied certificate of appealability, yet also decided that the district court was correct and that jurists of reason could not disagree. If the court rules that it has no jurisdiction, it is difficult to understand how it then can decide the case on the merits. Also, it is unclear from the opinion's use of the word "our" when stating the duty of federal habeas courts to review state habeas court's rulings.[39] Does "our" pertain to the district courts or the Fourth Circuit? If the court has granted this de novo review power to itself, where does the court find authority for this proposition? After conducting de novo review, the Fourth Circuit reversed the district court's issuance of a writ of habeas corpus on Rose's ineffective assistance of counsel claim.[40]

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32. *Rose*, 252 F.3d at 689.

33. *Id.* at 689-690.

34. 529 U.S. 362 (2000).

35. *Rose*, 252 F.3d at 689; *see* Williams v. Taylor, 529 U.S. 362, 389 (2000) (holding that a federal court may review de novo claims of ineffective assistance of counsel).

36. *Williams*, 529 U.S. at 399.

37. *Id.* at 391.

38. *Rose*, 252 F.3d at 690.

39. *Id.* at 689.

40. *Id.* at 695.