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CLANTON v. MUNCY

845 F.2d 1238 (4th Cir. 1988)

FACTS

The trial court convicted Earl Clanton of capital murder in 1981. Courts have reviewed Clanton's sentence on ten occasions. Clanton took his case through direct review to the Virginia Supreme Court. *Clanton v. Commonwealth*, 223 Va. 41, 286 S.E.2d 172 (1982). The Virginia Circuit Court denied Clanton's state habeas petition, and the Virginia Supreme Court affirmed this denial. Clanton then filed petition for federal habeas corpus relief. The United States District Court granted the stay of execution; however, the United States Circuit Court of Appeals reversed the grant of the writ. *Clanton v. Bair*, 826 F.2d 1354 (4th Cir. 1987). The United States Supreme Court denied certiorari.

Clanton refiled for state habeas corpus relief ten days before the date of his execution. The Virginia Circuit Court denied grant of the writ stating, inter alia, that Clanton's claims were procedurally defaulted. The Supreme Court of Virginia affirmed. Clanton then filed for federal habeas corpus relief in the Eastern District of Virginia, seeking a stay of execution until the district court reviewed the petition. The district court granted the stay. The state filed a motion with the Circuit Court of Appeals to vacate the stay.

APPLICATION TO VIRGINIA

This was a second or successive federal habeas corpus petition and as such, subject to dismissal for "abuse of writ" unless there were present "substantial grounds upon which relief might be granted." *Barefoot v. Estelle*, 463 U.S. 880, 895

(1983) and 28 U.S.C. § 2244 (b). Clanton faced the additional hurdle that those grounds must be properly before the court, that is, not waived or defaulted by defendant's failure to raise them earlier in accordance with state procedural rules. (See e.g. Va. Code Ann. §8.01-654B2 (1984)). Additionally, state court findings of fact are entitled to a presumption of correctness from the federal court. 28 U.S.C. § 2254(d).

The Fourth Circuit declined to address the merits of Clanton's claims because of the aforementioned rules. The Virginia Circuit Court had found as a fact that information relating to Clanton's abused childhood was available for presentation by trial defense council. *Clanton v. Muncy*, 845 F.2d 1238, 1240-1241 (1988). The Court also found that claims relating to further instruct the jury on mitigating evidence and alleged infirmities in the administration of the "vileness" aggravating factor had not been presented earlier, *Id.* at 1242, and there was not acceptable "cause" for not presenting them, since the legal basis was available to counsel. *Id.* (See *Wainwright v. Sykes*, 433 U.S. 72 (1977)) (necessity of both cause and prejudice to the defendant to raise a defaulted claim.)

There are two significant points relative to capital defense that can be drawn from *Clanton*. The second flows from the first.

1. The trial stage is crucial. All mitigation evidence, all federal claims, procedural and substantive, must be investigated, researched and presented or these matters may never be considered.
2. If the legal basis for any claim exists, that is, if other defense counsel anywhere in the country have perceived and litigated such a claim, there is no "cause" for failure to raise it and a federal habeas court will not hear it. *Clanton* at 1242. (Sandra Fischer)