

Fall 12-1-1988

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JOHNSON v. MISSISSIPPI 108 S. Ct. 1981 (1988), 1 Cap. Def. Dig. 17 (1988).

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JOHNSON v. MISSISSIPPI

108 S. Ct. 1981 (1988)

FACTS

On December 31, 1981, a Mississippi policeman stopped petitioner and three companions for speeding. While the officer searched the car, the petitioner stabbed the officer, and following a struggle one of Johnson's companions obtained the officer's gun and killed him. The trial court convicted and sentenced Johnson to death. The sentencing jury found three aggravating circumstances, one of which was the fact that the petitioner had been convicted and imprisoned for one year for a felony committed in New York. The sole evidence which the prosecutor presented in support of this aggravating circumstance, was an authenticated copy of petitioner's commitment to Elmira Reception Center in 1963 after his conviction for second degree assault with intent to commit first degree rape in Monroe County, New York. After the Mississippi Supreme Court affirmed Johnson's death sentence, the New York Court of Appeals reversed the prior conviction.

Petitioner sought post conviction relief on the ground that the New York conviction was invalid, and could not be used as an aggravating circumstance. The Mississippi Supreme Court denied the motion, three justices dissenting. 511 So.2d 1333 (1987). The United States Supreme Court granted certiorari to consider whether the Federal Constitution requires a re-examination of Johnson's death sentence.

HOLDING

The United States Supreme Court concluded that allowing a death sentence to stand, when partially based on a vacated conviction, violates the Eighth Amendment's prohibition against cruel and unusual punishment. 108 S.Ct. 1981, 1989 (1988).

a) Use of prior invalid conviction in sentencing phase was prejudicial.

The only evidence concerning the defendant's prior offense proffered by the prosecution consisted of a document establishing petitioner's conviction of assault in 1963. *Id.* at 1986. The Court stated that "the reversal of the conviction deprives the prosecutor's sole piece of documentary evidence of any relevance to Mississippi's sentencing decision." Contrary to the Mississippi Supreme Court's opinion, the fact that the petitioner served a sentence pursuant to an invalid conviction does not give the conviction itself any relevance to the sentencing decision. The Court held that "it would be perverse to treat the imposition of punishment pursuant to an invalid conviction as an aggravating circumstance. Also, because the jury saw no evidence regarding petitioner's conduct leading to the assault charge, that conduct is not relevant. The New York conviction did not legitimately support the death sentence, therefore its use at the sentencing hearing was prejudicial. *Id.* at 1986, 1987. This prejudice is shown by the prosecutor's conduct of repeatedly encouraging the sentencing jury to give the prior conviction weight in balancing the aggravating and mitigating factors "one against the other." *Id.* at 1987.

b) Inconsistently applied state waiver rule is not a sufficient ground to affirm the conviction.

The Mississippi Supreme Court found that because the petitioner failed to raise the validity of the New York conviction on direct appeal, he was procedurally barred from raising the claim before it. The United States Supreme Court found that the state did not strictly or regularly adhere to this procedure, and therefore the procedure "is not an adequate and independent state ground for affirming petitioner's conviction." *Id.* at 1988.

c) Jury's consideration of materially inaccurate evidence invalidated sentence regardless of the presence of other aggravating factors.

The Court also found Mississippi's argument that the decision below should be affirmed because the aggravating factor was not mentioned in the proportionality review of the death sentence to be without merit. *Id.* The Court said that the fact that the New York conviction was not the only aggravating factor which could support the sentence was not determinative. *Id.* The error in the lower court did not merely invalidate an aggravating factor supported by inadmissible evidence, but it allowed the jury to consider materially inaccurate evidence. *Id.* at 1989.

d) Separate Opinions.

Justice Brennan, with whom Justice Marshall joined, concurred, joining in the Court's opinion, except expressing the view that on remand the sentencing proceedings should preclude the reimposition of the death sentence.

Justice White, with whom the Chief Justice joined, concurred, suggesting that the Mississippi Supreme Court can decide whether a new sentencing hearing is required, or if the court itself can sentence the defendant by reweighing the two untainted aggravating circumstances against the mitigating circumstances.

APPLICATION TO VIRGINIA

The implication of the *Johnson* case for Virginia is not striking. Mississippi has a specific aggravating factor that defendant had been "previously convicted . . . of a felony involving the use or threat of violence to [another] person." Miss. Code 1972 Ann. §99-19-101(5)(b) (1988) Crim. Supp. (emphasis added). Virginia has no such aggravating factor. Although the Supreme Court's decision in *Johnson* does prohibit the prosecutor from presenting evidence of an *invalid* conviction, it does not prohibit the prosecution from using proof of prior unadjudicated criminal misconduct to support the 'future dangerousness' aggravating factor existing in Virginia. Va. Code Ann. § 19.2-264.4(C)(1988). Defense counsel should note, however, that it is advisable to request a particular instruction for the jury in such a case. The judge should tell the jury that in order to consider prior conduct that has not resulted in a valid conviction, the jury must make some finding that the defendant did indeed engage in the prior criminal conduct. The proposed jury instruction should require the finding be made beyond a reasonable doubt. (Sandra Fischer)