Capital Defense Journal

Volume 9 | Issue 1 Article 17

Fall 9-1-1996

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FACTS

Marlon Dwayne Williams, pleaded guilty to capital murder after a grand jury indicted him for murder for hire.[1] The indictment charged Williams with the murder of Helen Bledsoe, wife of the defendant's partner in a cocaine distribution scheme. According to the stipulated facts on appeal, Williams broke into the victim's house, shot her twice in the head and then left the scene. Over a year later, the defendant confessed to killing Bledsoe for $4,000, in a taped conversation with his roommate, a police informant.[2]

The sentencing report stated that Williams pleaded guilty to the murder charge because he claimed he was guilty, and did not want to blame anyone else for the crime. At the sentencing hearing, various witnesses testified to incidents of misconduct by Williams, including physical assault, death threats, planning for the commission of other murders, burglary, malicious wounding, assault during incarceration, and juvenile crimes. In mitigation, the defense presented evidence of physical abuse, a turbulent background, frequent moving, and Department of Social Services intervention. The trial judge sentenced Williams to death after a finding of future dangerousness.[3]

HOLDING

After conducting a proportionality review,[4] the Supreme Court of Virginia held that the lower court's imposition of the death sentence based on the finding of future dangerousness was not excessive or disproportionate to the crime committed and affirmed the conviction and death sentence.[5]

ANALYSIS/APPLICATION IN VIRGINIA

The court's opinion does not discuss what considerations led Williams to plead guilty to capital murder. While there are rare exceptions, it is strongly recommended that no defendant plead guilty to capital murder absent either an agreement from the Commonwealth not to seek death or a formal, or strong informal, indication from the trial judge that the sentence will not be death.

While a plea is ultimately the client's responsibility, capital defense attorneys have additional duties when clients are impaired in their capacities, as is often the situation in capital cases.[6]

Guilty pleas eliminate all issues concerning the gathering and presentation of evidence, jury selection, jury instructions and other trial-related errors. Nevertheless, upon entering a guilty plea, the defendant may appeal errors in the imposition of the sentence. For example, Williams could have assigned errors about the standard of proof for unadjudicated acts or the relevance of evidence to "future dangerousness," such as the physical abuse of his girlfriend or crimes allegedly committed when he was a juvenile. A potential assignment of error concerning the judge's consideration of mitigation evidence could have been based on *Hitchcock v. Dugger*,[7] in which the United States Supreme Court held a death sentence was unconstitutional where the trial court in effect instructed the jury to consider only mitigating factors set out in state statute.[8] The trial judge in *Williams*, in contradiction of *Hitchcock*, may have thought the defendant's mitigation evidence had to establish a statutory mitigating factor.[9]

Proportionality review requires the Supreme Court of Virginia to consider only "whether the sentence of death 'is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.'"[10] Unfortunately, reliance on this statutory review for relief is futile in Virginia. In Williams's case, defense counsel commendably prepared the record by supplementing it with cases where the defendant did not receive a death sentence for a comparable crime.[11] Although there were eleven murder-for-hire cases in which the defendant did not receive the death penalty, and four where the court imposed the death penalty, the Supreme Court of Virginia held that "'while there are exceptions, other sentencing bodies in this Commonwealth generally impose the supreme penalty for comparable or similar offenses.'"[12] This holding suggests the Virginia Supreme court conducts the comparison in a highly subjective manner. To date, the court has never reversed a sentence on statutory review.

Summary and Analysis by:
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1 Va. Code Ann. § 18.2-31(2).

2 *Williams v. Commonwealth*, 252 Va. 3, 4-6, 472 S.E.2d 50, 50-51 (1996).

3 *Id.* at 4-9, 472 S.E.2d at 51-53 (1996).

4 Va. Code Ann. § 17-110.1 requires that the Supreme Court of Virginia review every death sentence regardless of whether an appeal is made. The defendant in *Williams* appealed, but assigned as error only those matters the court was bound by statute to review in every case. 252 Va. at 5, 472 S.E.2d at 51.

5 *Id.* at 11, 472 S.E.2d at 54.

6 *See*, Henderson, *Presenting Mitigation Against the Client's Wishes: a Moral or Professional Imperative*, Capital Defense Digest, Vol 6., No. 1, p. 32 (Fall 1993) (discussing many of the ethical issues present in the defense of clients in death penalty cases, including those related to the defense of clients who do not wish to be defended).

7 *Hitchcock v. Dugger*, 481 U.S. 393 (1987).

8 *Id.* at 399.

9 *Williams*, at 11, 472 S.E.2d at 54, (stating that trial judge had "taken all of that into consideration" yet could not "see in any way how [he could] find . . . extreme mental or emotional disturbance at the time [Williams] killed the victim in this case"). Extreme emotional or mental disturbance is a statutory mitigating factor. Va. Code Ann. § 19.2-264.4(B)(ii). Capital sentencers must consider **all** proffered mitigation evidence, whether or not it suffices to establish or is even related to a statutory factor. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978); *Eddings v. Oklahoma*, 455 U.S. 104, 113-14 (1982).

10 Va. Code Ann. § 17-100.1(C)(2).

11 For further discussion of this issue, *see* case summary of *Roach v. Commonwealth* in Capital Defense Journal, Vol 8, No. 2, p. 11 (1996).

12 252 Va. at 10-11, 472 S.E.2d at 54 (quoting *Roach v. Commonwealth*, 244 Va. 455, 468, 468 S.E.2d 98, 114 (1996)).