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Stewart v. Smith 122 S. Ct. 2578 (2002)

In *Stewart v. Smith*¹ the United States Supreme Court evaluated when state law grounds for review are adequate and independent of federal law.² Respondent Robert Douglas Smith (“Smith”) was convicted of first-degree murder, kidnapping, and sexual assault. He was sentenced to death on the murder charge, and then filed a series of unsuccessful petitions for post-conviction relief in state court.³ The state court ruled that Smith’s ineffective assistance of counsel claim had been waived pursuant to Arizona Rule of Criminal Procedure 32.2(a)(3) because he had not raised a claim of ineffective assistance of counsel in two previous appeals.⁴ Smith then filed a petition for a writ of habeas corpus in the United States District Court for the District of Arizona, claiming, among other things, that his trial counsel had provided ineffective assistance during the sentencing phase of his trial.⁵ The district court denied the petition.⁶ The district court held that the state court’s ruling was independent of federal law.⁷ The Court of Appeals for the Ninth Circuit reversed the district court’s decision.⁸ The United States Supreme Court then reversed the Ninth Circuit’s ruling and affirmed the district court’s order.⁹

The Supreme Court held that, because the state court found the waiver without looking to the merits of the claim, the state court’s procedural finding was independent of federal law.¹⁰ The Court distinguished whether the waiver required the state court to look to the merits of the case itself or “merely upon the particular right alleged to have been violated.”¹¹ The Court, in order to ascertain which method the state court employed, certified a question to the Supreme Court of Arizona.¹² The Supreme Court of Arizona held that the

1. 122 S. Ct. 2578 (2002).

2. *Stewart v. Smith*, 122 S. Ct. 2578 (2002).

3. *Id.* at 2580.

4. *Id.*; ARIZ. R. CRIM. P. 32.2(a)(3) (reading in pertinent part that a “defendant shall be precluded from relief,” if his grounds for relief have “been waived at trial, on appeal, or in any collateral proceeding”).

5. 28 U.S.C. §§ 2241, 2254 (2000).

6. *Stewart*, 122 S. Ct. at 2580.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 2582.

11. *Id.* at 2581.

12. *Stewart*, 122 S. Ct. at 2581. The Court asked, “[D]id the question whether an asserted

waiver finding only required categorization of the particular right to be evaluated.¹³ Thus, the United States Supreme Court concluded that Rule 32.2(a)(3) determinations in Arizona are independent of federal law because they do not depend upon the merits of a federal constitutional ruling.¹⁴

Conversely, the Court also found that if the state court had looked primarily to the merits of Smith's case, the state court's ruling would then be dependent on federal law.¹⁵ The Ninth Circuit came to the conclusion that the state court looked primarily at the merits of Smith's case.¹⁶ However, the state court's finding that Smith's reason for defaulting his claim was deficient had little to do with the underlying claim of ineffective counsel.¹⁷

This case is pertinent to Virginia because the procedural default rules in Virginia and Arizona are similar. Rule 32.2(a)(3) states that a "defendant shall be precluded from relief" if his grounds for relief have "been waived at trial, on appeal, or in any previous collateral proceeding."¹⁸ The Court's ruling in *Stewart* rested on the Supreme Court of Arizona's interpretation that a Rule 32.2(a)(3) inquiry did not require looking to the merits of the case.¹⁹ In Virginia, Rule 5:25 of the Rules of the Supreme Court of Virginia "sets the foundation for procedural default in Virginia capital cases."²⁰ Rule 5:25 states that error will not be sustained "unless the objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice."²¹ Virginia's procedural default rule generally will not require an evaluation of the merits of the case involving a "good cause" because that inquiry looks only at the reason for the default rather than looking at its effect.²² Conversely, when the Virginia court has considered and rejected default under the "ends of justice" exception, the inquiry generally will involve the merits of the

claim was of 'sufficient constitutional magnitude' to require a knowing, voluntary, and intelligent waiver for purposes of Rule 32.2(a)(3), depend upon the merits of the particular claim, or merely upon the particular right to have been violated?" *Id.* (citations omitted).

13. *Stewart v. Smith*, 46 P.3d 1067, 1068 (Ariz. 2002) (en banc).

14. *Stewart*, 122 S. Ct. at 2581.

15. *Id.*

16. *Id.*; see *Smith v. Stewart*, 241 F.3d 1191, 1196-97 (9th Cir. 2001). The Ninth Circuit found that the state court did not clearly and explicitly invoke a procedural rule as the basis for its ruling. Therefore, federal review was not barred. *Smith*, 241 F.3d at 1196-97.

17. *Stewart*, 122 S. Ct. at 2581. Smith defaulted due to his failure to argue ineffective assistance of counsel in two previous appeals. He argued that this was caused by his attorney's conflict of interest with the Public Defender's Office. The state court ruled that the public defender had no loyalty conflict between his client and his employer, and was thus an insufficient ground for waiver. *Id.* at 2581-82.

18. ARIZ. R. CRIM. P. 32.2(a)(3).

19. *Stewart*, 122 S. Ct. at 2581.

20. Matthew K. Mahoney, *Bridging the Procedural Default Chasm*, 12 CAP. DEF. J. 305, 307 (2000); VA. S. CT. R. 5:25.

21. VA. S. CT. R. 5:25.

22. *See id.*

claim.²³ It would be nearly impossible for a court to decide the justness of applying the procedural default rule without looking at the issue procedurally and factually to determine whether the waived issue would have made a significant difference.

C. Blaine Elliott

23. *Sæ id.*

