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# Carter v. Lee

## 283 F.3d 240 (4th Cir. 2002)

### I. Facts

On March 9, 1992, Mrs. Helen Purdy (“Purdy”) was stabbed thirteen times and found dead in a pool of blood on her living room floor. Purdy’s purse was found open on her bed and fifteen dollars that Purdy placed by the telephone were missing. On April 6, 1992, Desmond Keith Carter (“Carter”) was indicted for the death of Purdy, his next-door neighbor. On February 1, 1993, Carter was indicted for the robbery of Purdy with a dangerous weapon.<sup>1</sup>

In 1993, Carter was convicted by the Superior Court of Rockingham County for the first-degree murder of Purdy. He was also sentenced on a charge of robbery with a dangerous weapon. The jury unanimously recommended the death penalty and the judge sentenced Carter to death. Carter was also sentenced to forty years in prison for the robbery.<sup>2</sup>

Carter appealed to the Supreme Court of North Carolina; the court affirmed his convictions and sentences.<sup>3</sup> The United States Supreme Court denied Carter’s petition for certiorari.<sup>4</sup> Carter, asserting five claims of error, filed a Motion for Appropriate Relief (“MAR”) seeking post-conviction relief in the Superior Court of Rockingham County (“PCR Court”).<sup>5</sup> The PCR Court denied four of Carter’s five claims and conducted an evidentiary hearing on the remaining claim— whether the advice given to Carter by his attorneys, that he should testify in his own defense during the guilt phase of his trial, was constitutionally defective.<sup>6</sup> The PCR Court found that both of Carter’s attorneys met with him and spoke with him on many occasions about a possible diminished capacity defense premised on Carter’s consumption of alcohol and drugs prior to the murder.<sup>7</sup> The court also noted that Carter’s lawyer, Thomas E. Medlin, Jr. (“Medlin”), consulted the Death Penalty Resource Center and that both attorneys hired a

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1. Carter v. Lee, 283 F.3d 240, 242-46 (4th Cir. 2002).

2. *Id.* at 243.

3. *Id.*

4. *Id.* at 240; *see also* Carter v. North Carolina, 517 U.S. 1225 (1996) (mem.) (denying writ of certiorari).

5. Carter, 283 F.3d at 243 n.3. In North Carolina, any attempt to obtain relief from criminal trial errors is a MAR. Therefore, a MAR is not exactly the same as a habeas corpus petition. *See generally* N.C. GEN. STAT. § 15A-1401 (2001) (allowing a capital defendant in North Carolina to seek post-conviction relief through MAR).

6. Carter, 283 F.3d at 244.

7. *Id.* at 250.

psychologist, Dr. John Warren ("Warren"), to examine Carter's mental status.<sup>8</sup> The attorneys also advised Carter that he would be cross-examined about his drug activities and they videotaped a mock cross-examination to prepare him.<sup>9</sup> The court determined that Carter was advised about the strategy and never objected.<sup>10</sup> Carter conceded that the decision to testify in the trial's guilt phase was his alone.<sup>11</sup> The PCR Court denied Carter's ineffective assistance of counsel claim.<sup>12</sup>

Carter sought review from the Supreme Court of North Carolina for the PCR Court's denial and was denied his request for certiorari.<sup>13</sup> Carter did not seek review by the United States Supreme Court. Carter requested federal habeas corpus relief, based on the ineffective assistance claim, from the United States District Court for the Middle District of North Carolina. In response, the State moved for summary judgment.<sup>14</sup> The district court granted summary judgment and declined to issue Carter a certificate of appealability.<sup>15</sup> Carter then sought issuance of a certificate of appealability and an award of habeas corpus relief from the United States Court of Appeals for the Fourth Circuit.<sup>16</sup>

Carter raised a single issue at the habeas proceeding: that he was denied his Sixth Amendment right to effective assistance of counsel in his 1993 North Carolina state court trial when his attorney advised him to testify in his own defense during the guilt phase of the trial.<sup>17</sup> In support of this claim, Carter asserted two different errors: (1) counsel failed to explain to him the disadvantages of testifying in his own defense; and (2) his attorneys gave flawed advice that forced him to testify in breach of his privilege against self-incrimination.<sup>18</sup>

## II. Holding

The Fourth Circuit held that Carter was not entitled to habeas corpus relief and declined to issue a certificate of appealability.<sup>19</sup> The standard for issuance of a certificate of appealability is when "the applicant has made a substantial showing of the denial of a constitutional right."<sup>20</sup> The Fourth Circuit concluded that

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8. *Id.*

9. *Id.* at 251.

10. *Id.* at 251 n.8.

11. *Id.* at 251.

12. *Carter*, 283 F.3d at 252.

13. *Id.* at 244.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 249. See generally U.S. CONST. amend. VI (guaranteeing right to the effective assistance of counsel).

18. *Carter*, 283 F.3d at 249.

19. *Id.* at 253.

20. *Id.* at 244 n.6 (quoting 28 U.S.C. § 2253(c)(2) (2000)).

Carter could not make a "substantial showing" that his counsel had been ineffective within the meaning of *Strickland v Washington*.<sup>21</sup>

### III. Analysis

Under *Strickland*, in order to prevail on an ineffective counsel claim, a two-pronged test must be satisfied.<sup>22</sup> The first requirement is that the defendant must demonstrate that counsel's performance was lacking to such a degree that counsel was not functioning as the counsel guaranteed to the defendant by the Sixth Amendment.<sup>23</sup> Second, the defendant must show that the deficient performance by counsel prejudiced the defense.<sup>24</sup>

#### A. Explanation of the Disadvantages of Testifying

Carter first relied on *Johnson v Baldwin*<sup>25</sup> to argue that his counsel's advice was unreasonable because there were conflicts between Carter's testimony and other evidence in the case.<sup>26</sup> Carter's conflicting testimony specifically included contradictory admissions and claims concerning his actions in connection with the death of Purdy.<sup>27</sup> The Fourth Circuit found that Carter's reliance on *Baldwin* was misplaced.<sup>28</sup> The court noted that unlike *Baldwin*, there was substantial evidence against Carter and that his attorneys conducted an adequate investigation.<sup>29</sup> Further, unlike *Baldwin*, there was no showing that Carter perjured himself.<sup>30</sup>

The Fourth Circuit evaluated Carter's first contention that his lawyers, Medlin and Douglas R. Hux ("Hux"), did not appraise him of the advantages and disadvantages of testifying.<sup>31</sup> The court relied on the findings of the PCR Court, which found that Medlin considered the advantages and disadvantages of presenting the diminished capacity argument through Warren's and Carter's testimony.<sup>32</sup> The Fourth Circuit observed that throughout the course of the trial,

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21. *Id.* at 248; see *Strickland v. Washington*, 466 U.S. 668 (1984) (holding that defendant must show counsel's deficient performance and that his performance prejudiced the defense before a sentence or conviction will be overturned).

22. *Strickland*, 466 U.S. at 687.

23. *Id.*

24. *Id.*

25. 114 F.3d 835 (9th Cir. 1997).

26. *Carter*, 283 F.3d at 251-52 n.9; see *Johnson v. Baldwin*, 114 F.3d 835, 840 (9th Cir. 1997) (holding that attorney's failure to investigate defendant's denial of presence at scene of crime is ineffective assistance of counsel).

27. *Carter*, 283 F.3d at 250.

28. *Id.* at 251-52 n.9.

29. *Id.*

30. *Id.*

31. *Id.* at 252.

32. *Id.* at 250.

Medlin and Hux consulted with Carter about his conflicting statements and the attorneys believed that testifying would repair Carter's credibility.<sup>33</sup> The Fourth Circuit, relying on this evidence, stated that Carter was unable to show that the PCR court's findings were erroneous.<sup>34</sup>

Because the advice given to Carter, concerning whether he should testify, was necessary, the Fourth Circuit relied on *United States v. Teague*<sup>35</sup> to determine that Carter's counsel was not constitutionally deficient.<sup>36</sup> Rather, the Fourth Circuit found that the attorneys' performance was based on sound strategy and fell within the boundaries of reasonable professional norms.<sup>37</sup> With regard to Carter's request for a new sentencing hearing, the court observed that Carter must show that had he not testified, the jury would not have recommended a death sentence.<sup>38</sup> The court asserted that the jury would have recommended the death sentence absent Carter's testimony.<sup>39</sup>

### B. Forced Testimony

Carter also asserted that his lawyer's advice "forced him to testify against his will."<sup>40</sup> He based this contention on Hux's allegedly mistaken belief that Carter "had to testify in order to establish the foundation for a diminished capacity defense."<sup>41</sup> Carter contended that neither of his lawyers notified him that his testimony was not legally necessary; therefore, the advice was constitutionally defective.<sup>42</sup> Carter asserted that if he had been advised that his testimony was not legally necessary, he would not have taken the stand.<sup>43</sup>

In reviewing Carter's claim, the Fourth Circuit examined whether counsel's performance was reasonable under established professional norms and according to the circumstances of this case.<sup>44</sup> The Fourth Circuit, relying on *Strickland*, observed that "the defendant must overcome the presumption that, under the

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33. *Carter*, 283 F.3d at 250.

34. *Id.* at 251.

35. 953 F.2d 1525 (11th Cir. 1992).

36. *Carter*, 283 F.3d at 252; see *United States v. Teague*, 953 F.2d 1525, 1533 (11th Cir. 1992) (proposing that when counsel has come to a conclusion whether his client should testify, he should advise his client "in the strongest possible terms").

37. *Carter*, 283 F.3d at 252.

38. *Id.* at 252 n.10 (citing *Jones v. Murray*, 947 F.2d 1106, 1115 (4th Cir. 1991) (stating that a defendant must show a reasonable probability that the jury would not have imposed death if the defendant testified)).

39. *Id.*

40. *Id.* at 252.

41. *Id.*

42. *Id.*; U.S. CONST. amend. V (stating, "No person . . . shall be compelled in any criminal case to be a witness against himself").

43. *Carter*, 283 F.3d at 253.

44. *Id.* at 249.

circumstances, the challenged action might be considered sound trial strategy."<sup>45</sup> The Fourth Circuit found that Medlin did understand that Carter's testimony was not legally necessary, but that it was necessary to the success of the diminished capacity defense.<sup>46</sup> Additionally, the court found that Carter was aware that he was not required to testify and that he had "no strong feelings" about whether to testify.<sup>47</sup> The Fourth Circuit concluded that Carter's lawyers did not force him to desert any of his principles.<sup>48</sup> The court also asserted that Carter was unable to demonstrate prejudice, required by the second prong of the *Strickland* analysis.<sup>49</sup> Therefore, the Fourth Circuit declined to issue a certificate of appealability.<sup>50</sup>

#### IV. Application in Virginia

As the Fourth Circuit has shown, the presumption that an attorney's performance is strategically sound and falls within the bounds of reasonable professional norms is strong. According to the Fourth Circuit, Carter's attorneys properly advised their client to testify during the guilt phase of his trial.<sup>51</sup> This case is a good model for attorneys who are considering whether to advise their client to give guilt or sentencing phase testimony. Capital defense attorneys should discuss thoroughly with the defendant the issue of testifying. Additionally, attorneys should consult death penalty resources and, if necessary, hire a psychologist to evaluate the defendant's mental status. The Fourth Circuit, in *Carter*, found that these measures were reasonable within professional norms.<sup>52</sup> In deciding this case, the Fourth Circuit relied, in part, on *United States v Teague*, and noted that advice given to capital defendants about testifying should be "in the strongest possible terms."<sup>53</sup> Practitioners should make a concerted effort to educate capital defendants clearly on the necessity of the client's testimony to the success of the defense. The Fourth Circuit, using this case as an example, continues to apply the *Strickland* test strictly.<sup>54</sup>

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45. *Id.*

46. *Id.* at 253.

47. *Id.* at 253 n.12.

48. *Id.* at 253.

49. *Carter*, 283 F.3d at 253.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*; *Teague*, 953 F.2d at 1533.

54. See *Mickens v. Taylor*, 122 S. Ct. 1237, 1245 (2002) (affirming Fourth Circuit ruling that *Strickland* standard is not met when defendant failed to show that conflict of interest adversely affected counsel's performance); *Wiggins v. Corcoran*, 288 F.3d 629, 641 (4th Cir. 2002) (stating that defense counsel's failure to disclose petitioner's bad childhood and low mental capacity was a reasonable, strategic choice); *Hunt v. Lee*, 291 F.3d 284, 293 (4th Cir. 2002) (maintaining that defendant's ineffective assistance of counsel claim, based on defense counsel's closing argument concerning the "barbaric nature" of the death penalty, did not support habeas relief).

*V. Conclusion*

The Fourth Circuit, relying on the findings of the PCR Court, denied Carter's appeal and rejected his request for a certificate of appealability.<sup>55</sup> The Fourth Circuit found that Carter's attorneys educated him about the advantages and disadvantages of testifying and did not coerce his testimony.<sup>56</sup> Therefore, the court held that Carter did not satisfy *Strickland's* two-pronged test.<sup>57</sup> The advice given to Carter to testify in the guilt phase of his trial was deemed by the Fourth Circuit as acceptable trial strategy.<sup>58</sup>

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55. *Carter*, 283 F.3d at 253.

56. *Id.* at 252.

57. *Id.* at 253; see *Strickland*, 466 U.S. at 687.

58. *Carter*, 283 F.3d at 252.