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Hudson v. Commonwealth

590 S.E.2d 362 (Va. 2004)

I. Facts

James Bryant Hudson (“Hudson”) was indicted in September 2002 for the capital and first-degree murders of three individuals.¹ Hudson pleaded guilty to one count of capital murder, one count of first-degree murder, and two counts of illegal use of a firearm, in exchange for the Commonwealth’s agreement to drop the remaining charges.² After accepting Hudson’s guilty pleas, the trial court conducted a sentencing hearing.³ The Commonwealth presented evidence supporting its contention that both aggravating factors, vileness and future dangerousness, existed and that Hudson should receive the death penalty.⁴ In accordance with Hudson’s instructions, the defense counsel presented no mitigating evidence.⁵ The court found that both aggravating factors existed and sentenced Hudson to death.⁶

In May 2003, Hudson waived his right to appeal his sentence of death.⁷ Despite this waiver, the Supreme Court of Virginia was required to review Hudson’s death sentence under section 17.1-313 of the Virginia Code.⁸ Pursuant

1. *Hudson v. Commonwealth*, 590 S.E.2d 362, 363 (Va. 2004); see VA. CODE ANN. § 18.2-31(7) (Michie Supp. 2003) (stating that “[t]he willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction” constitutes capital murder); VA. CODE ANN. § 18.2-32 (Michie Supp. 2003) (stating that “[m]urder, other than capital murder . . . by any willful, deliberate, and premeditated killing . . . is murder of the first degree”). Hudson shot and killed Stanley Cole, Stanley’s brother Wesley, and Wesley’s wife Patsy on July 3, 2002. *Hudson*, 590 S.E.2d at 362–63. Hudson was also indicted on “six counts of unlawfully and feloniously using a firearm in the commission of a felony” under section 18.2-53 of the Virginia Code. *Id.* (citing VA. CODE ANN. § 18.2-53 (Michie 1996)).

2. *Hudson*, 590 S.E.2d at 363.

3. *Id.*

4. *Id.*; see VA. CODE ANN. § 19.2-264.2 (Michie 2000) (stating that a court may not impose a death sentence unless the court or jury finds that the defendant “would constitute a continuing serious threat to society or that his conduct in committing the offense for which he stands charged was outrageously or wantonly vile, horrible or inhuman”).

5. *Hudson*, 590 S.E.2d at 363–64; see Ross E. Eisenberg, *The Lawyer’s Role When The Defendant Seeks Death*, 14 CAP. DEF. J. 55, 62 (2001) (discussing the lawyer’s obligations when defendants “ask for death” by refusing to allow the presentation of mitigating evidence).

6. *Hudson*, 590 S.E.2d at 364. In making its decision, the trial court noted Hudson’s significant criminal record, his lack of any mental or emotional disturbance, his failure to show remorse, and the viciousness of the crime. *Id.*

7. *Id.*

8. *Id.*; see VA. CODE ANN. § 17.1-313(A) (Michie 2003) (stating that “[a] sentence of death . . . shall be reviewed on the record by the Supreme Court” (emphasis added)); VA. CODE ANN. §

to section 17.1-313, the court considered whether Hudson's sentence was imposed " 'under the influence of passion, prejudice or any other arbitrary factor' and whether the sentence [was] excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.'"⁹

II. Holding

The Supreme Court of Virginia found that the trial court did not arbitrarily impose Hudson's death sentence.¹⁰ In addition, the court determined that Hudson's death sentence was proportionate to the sentences in similar capital murder cases.¹¹ Therefore, the Supreme Court of Virginia affirmed Hudson's sentence of death.¹²

III. Analysis/Application in Virginia

The Supreme Court of Virginia performed its review of Hudson's sentence in accordance with section 17.1-313 of the Virginia Code.¹³ The court noted that a defendant may waive the right to appeal his death sentence, but he may not waive the statutorily mandated review of section 17.1-313.¹⁴ The court stated that " 'the purpose of the review process is to assure the fair and proper application of the death penalty statutes in this Commonwealth and to instill public confidence in the administration of justice.'"¹⁵ The first part of the court's review addressed whether the trial court imposed Hudson's sentence arbitrarily.¹⁶ In support of its finding that the trial court acted properly, the Supreme Court of Virginia noted "that the trial court, although not mandated to do so, offered Hudson more than one opportunity to present mitigating evidence at the sentencing hearing."¹⁷

The second part of the court's review addressed whether Hudson's sentence was proportionate "to the penalty imposed in similar cases, considering both the crime and the defendant."¹⁸ Despite the statute's requirement that the court

17.1-313(C) (requiring the court to consider whether a death sentence was imposed arbitrarily and is proportionate to other similar cases).

9. *Hudson*, 590 S.E.2d at 364 (quoting VA. CODE ANN. § 17.1-313(C)).

10. *Id.*

11. *Id.*

12. *Id.* at 365.

13. *Id.* at 364; see VA. CODE ANN. § 17.1-313 (requiring the Supreme Court of Virginia to review a sentence of death to ensure that the sentence was not imposed arbitrarily and that it is proportionate to the sentences imposed in similar cases).

14. *Hudson*, 590 S.E.2d at 364.

15. *Id.* (quoting *Akers v. Commonwealth*, 535 S.E.2d 674, 677 (Va. 2000)).

16. *Id.*

17. *Id.*

18. *Id.* (citing VA. CODE ANN. § 17.1-313(C)).

consider "the defendant," the Supreme Court of Virginia never referred to Hudson as a human being.¹⁹ The court's proportionality review should have taken Hudson's personal circumstances into account.²⁰ However, because Hudson pleaded guilty and refused to present evidence in mitigation, the Supreme Court of Virginia could only compare Hudson's crime to other similar crimes.²¹ The lack of mitigation evidence left the court with little basis for comparing Hudson's personal situation to those of similarly situated defendants. While the court's incomplete proportionality review in *Hudson* was understandable, other capital cases involving substantial mitigating evidence have also received incomplete review.²² Proportionality review in cases involving significant mitigating evidence should not read the same as the review in *Hudson*. The Supreme Court of Virginia must consider both the crime *and* the defendant as a human being when performing its proportionality review.²³

In addition, the court stated that it "accumulated the records of all capital murder cases where a defendant received a death sentence as well as those where a defendant received a life sentence."²⁴ Despite this assertion, the court failed to cite any examples of cases considered in its proportionality review that resulted in a life sentence.²⁵ In fact, on the same day that *Hudson* was handed down, the Supreme Court of Virginia decided *Powell v Commonwealth*.²⁶ Unlike the *Hudson*

19. See VA. CODE ANN. § 17.1-313(C) (requiring the court to consider "the defendant").

20. *Id.*

21. It is important to note that when a defendant refuses to present mitigating evidence, the Supreme Court of Virginia is essentially precluded from comparing the defendant to defendants who received life sentences in similar cases. A verdict resulting in a life sentence is most likely based on the mitigation evidence presented by that defendant. Thus, if a defendant refuses to present mitigating evidence, the proportionality review cannot include a comparison to defendants who received life sentences.

22. See *Green v. Commonwealth*, 580 S.E.2d 834, 850 (Va. 2003) (comparing Green's crime to other similar crimes, but neglecting to discuss the defendant's diminished mental capacity evidence).

23. VA. CODE ANN. § 17.1-313(C).

24. *Hudson*, 590 S.E.2d at 364. Because appeals from life sentences do not address sentencing issues, the record from the Court of Appeals of Virginia is factually inadequate for use by the Supreme Court of Virginia in its proportionality review. See *infra* Part IV.

25. *Hudson*, 590 S.E.2d at 364. The Supreme Court of Virginia cited three cases involving multiple homicides as examples of the cases used in its proportionality review. *Id.* All three cases resulted in death sentences. *Id.* (citing *Zirkle v. Commonwealth*, 553 S.E.2d 520 (Va. 2001); *Goins v. Commonwealth*, 470 S.E.2d 114 (Va. 1996); *Stewart v. Commonwealth*, 427 S.E.2d 394 (Va. 1993)).

26. See *Powell v. Commonwealth*, 590 S.E.2d 537, 563 (Va. 2004) (stating that the Supreme Court of Virginia's proportionality review "also considered cases in which defendants received life sentences, rather than the death penalty, for capital murder during the commission of rape or attempted rape"). In *Powell*, the court cited *Horne v. Commonwealth*, 339 S.E.2d 186 (Va. 1986) and *Keil v. Commonwealth*, 278 S.E.2d 826 (Va. 1981), cases which resulted in life sentences. *Powell*, 590 S.E.2d at 563.

court, the *Powell* court actually cited capital cases that resulted in life sentences in its proportionality review.²⁷ Because the court in *Hudson* failed to cite any capital murder cases that resulted in life sentences, it is unclear whether the court actually considered any life sentence cases as part of its proportionality review.²⁸

IV. Conclusion

The application of Virginia's death penalty proportionality review system is flawed. In cases like *Hudson*, in which it is unclear whether life sentence cases were included in the proportionality review, a strong risk exists that the review performed was a nullity. Even in cases like *Powell*, in which the court has considered life sentence cases, the compiled records are incomplete as to sentencing issues.²⁹ In order to remedy the random application of death sentences, the Supreme Court of Virginia must address these weaknesses in its proportionality review system.

Jessie A. Seiden

27. *Powell*, 590 S.E.2d at 563. For a more complete discussion of the significance of *Powell*, see Terrence T. Egland, Case Note, 16 CAP. DEF. J. 591 (2004) (analyzing *Powell v. Commonwealth*, 590 S.E.2d 537 (Va. 2004)).

28. One life sentence case that the court might have considered, for example, is the case of Zachary Cooper. See Maria Glod, *Jury Seeks Life Sentence in Va. Triple Slaying: Ex-Marine Killed Wife, Daughter and Girlfriend in Motel*, WASH. POST, Feb. 15, 2003, at B1 (Va. ed.) (discussing the case of Zachary Cooper, which also involved a capital charge based on three killings by gunshot, but which instead resulted in a life sentence), at <http://www.washingtonpost.com>.

29. For a more complete discussion of these issues, see Jessie A. Seiden, Case Note, 16 CAP. DEF. J. 625 (2004) (analyzing *Palmer v. Clarke*, 293 F. Supp. 2d 1011, 1017 (D. Neb. 2003)). See also Cynthia M. Bruce, *Proportionality Review Still Inadequate, But Still Necessary*, 14 CAP. DEF. J. 265, 268 (2002) (discussing how the records from life sentence cases reviewed by the court of appeals are "not factually developed on the issue of sentencing" and how "the lack of factual information makes these cases deficient as tools when determining whether similar circumstances exist").