LOCKHART v. FRETWELL 113 S.Ct. 838 (1993)

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LOCKHART v. FRETWELL
113 S.Ct. 838 (1993)
United States Supreme Court

FACTS

In August 1985, an Arkansas jury convicted Bobby Ray Fretwell of capital felony murder occurring during a robbery. Fretwell and two accomplices decided to steal a truck parked outside a house. Fretwell knocked on the door of the house and, when the victim answered the door, Fretwell took his money and the key to the truck. Fretwell then shot the victim in the temple, left him to die, and took the truck.

During the penalty phase, the State presented evidence for two aggravating factors: (1) the murder was committed for pecuniary gain, and (2) the murder was committed to facilitate Fretwell’s escape. Fretwell testified on his own behalf, along with a psychologist. No other mitigating evidence was presented. The jury found the existence of the first aggravating factor, that the murder was committed for pecuniary gain, but not the second aggravating factor of facilitating escape. After finding no mitigating factors, the jury sentenced Fretwell to death.

On direct appeal, Fretwell argued, inter alia, that his death sentence should be overturned in light of Collins v. Lockhart. In Collins, the Eighth Circuit Court of Appeals held that a death sentence be unconstitutional if it was based upon an aggravating factor that duplicated an element of the underlying felony. Fretwell argued that because the only aggravating factor found by the jury—that the murder was committed for pecuniary gain—duplicated the underlying felony of murder in the course of a robbery, his death sentence was unconstitutional under Collins. The Arkansas Supreme Court declined to consider the argument because no objection was made to use of the aggravating factor during the sentencing phase.

Fretwell filed a state habeas corpus petition, arguing that his counsel had been ineffective for failing to raise a Collins objection at trial. The Arkansas Supreme Court again rejected the claim, this time citing the failure of the Arkansas courts to pass on the merits of the Collins question at the time of Fretwell’s trial. Fretwell then filed a federal habeas corpus petition alleging, inter alia, ineffective assistance of counsel for failure to raise a Collins objection. The United States District Court for the Eastern District of Arkansas held that counsel had a duty to be aware of all law relevant to capital cases and that failure to raise the Collins objection during the sentencing phase amounted to prejudice under Strickland v. Washington.

The district court granted Fretwell’s petition and conditionally vacated the death sentence.

HOLDING

The Supreme Court reversed the Eighth Circuit, finding that Fretwell had failed to satisfy the Strickland test for ineffective assistance of counsel. The Court ruled that Fretwell had failed to demonstrate any prejudice as a result of his attorney’s failure to raise a Collins objection during the sentencing phase.

ANALYSIS/APPLICATION IN VIRGINIA

In an opinion delivered by Chief Justice Rehnquist, the Supreme Court focused on the Sixth Amendment’s right to counsel as primarily a protection of a defendant’s fundamental right to a fair trial. Pointing out that the Strickland test reflects this concern for fairness and reliability in the trial process, Rehnquist reasoned that “an analysis focusing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective.” Because the Eighth Circuit had overturned its Collins decision in 1989, Rehnquist found that the result of Fretwell’s trial was neither unfair nor unreliable: “Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him.”

Under Rehnquist’s interpretation, a defendant’s rights under a Strickland claim of ineffective assistance of counsel will be evaluated under the law existing at the time the claim is heard, not under the law in existence at the time of the alleged errors. In a strongly worded dissent, Justice Stevens, joined by Justice Blackmun, pointed out the inconsistency of the majority’s position with the Court’s retroactivity ruling in Teague v. Lane. Justice Stevens reasoned:

If, under Teague, a defendant may not take advantage of subsequent changes in the law when they are favorable to him, then there is no self-evident reason why a State should be able to take advantage of subsequent changes in the law when they are adverse to his interests.

1 754 F.2d 258 (8th Cir.), cert. denied, 474 U.S. 1013 (1985).
5 Fretwell, 739 F.Supp. at 1337.
6 Fretwell v. Lockhart, 946 F.2d 571 (8th Cir. 1991).
8 Fretwell, 946 F.2d at 578.
10 Id.
11 Id. at 842.
12 Id. at 844.
13 489 U.S. 288 (1989). In Teague, the Court held that “new rules ... should not be applied retroactively to cases on collateral review.” A case is deemed to announce a new rule “if the result was not dictated by precedent existing at the time the defendant’s conviction became final.” Id. at 301.
under the second prong: Fretwell might be entitled to relief even if he could not show prejudice had so fundamentally failed the first prong of the Strickland test, supra, 466 U.S. at 689. Justice Stevens also found that Fretwell’s attorney opposition to the prejudice prong because “[prejudice] focuses on the question whether counsel’s deficient performance renders the results of the trial unreliable or the proceeding fundamentally unfair.”

If an open question previously existed as to the timing of the prejudice analysis under Strickland, the majority opinion makes it clear that it is the law existing at the time of review that is to be considered in determining prejudice.

Now that prejudice under a Strickland claim is analyzed in light of changes in the law beneficial only to the State, the need for timely objection at trial is all the more important. After Fretwell, even failure to raise a claim that clearly constituted attorney incompetence may not result in relief if the law changes unfavorably. When added to the major hurdle of the Teague retroactivity rule, the Court has built an effective roadblock to capital defendants seeking habeas relief.

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**GRAHAM v. COLLINS**

**113 S.Ct. 892 (1993)**

United States Supreme Court

**FACTS**

On May 13, 1981, Gary Graham shot Bobby Grant Lambert to death in the parking lot of a Houston grocery store during the course of a robbery. At trial Graham’s mistaken identity defense failed and he was convicted of capital murder. At the sentencing phase, after the state presented evidence that Lambert’s murder began a week during which Graham committed a series of violent crimes, Graham attempted to put on evidence in mitigation of his general good character traits, his relative youth, and a positive employment history. Applying the “special questions” scheme of the Texas capital-sentencing statute, the jury sentenced Graham to death. After the Texas Court of Criminal Appeals affirmed the sentence and the state courts rejected Graham’s attempts at post-conviction relief, Graham petitioned in federal district court for habeas corpus relief arguing that a jury could not give proper consideration to his mitigating evidence within the confines of the Texas special issues scheme. The district court and the Court of Appeals for the Fifth Circuit denied Graham’s petition for writ of habeas corpus.

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1 The Texas capital-sentencing statute at the time of Graham’s trial required the jury to consider:

(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with reasonable expectation that the death of the deceased would occur;

(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(3) if raised by the evidence whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.

14 Lockhart, 113 S.Ct. at 852-853 (Stevens, J., dissenting).

15 Id. at 849 (quoting Strickland, 466 U.S. at 690).

16 Lockhart, 113 S.Ct. at 849 (quoting Strickland, 466 U.S. at 695 (citation omitted)). Justice Stevens also found that Fretwell’s attorney had so fundamentally failed the first prong of the Strickland test that Fretwell might be entitled to relief even if he could not show prejudice under the second prong:

The fact that counsel’s performance constituted an abject failure to address the most important legal question at issue in

to the prejudice prong because “[prejudice] focuses on the question whether counsel’s deficient performance renders the results of the trial unreliable or the proceeding fundamentally unfair.”

17 Id. at 851.

17 Id. at 844.

Summary and Analysis By: Susan F. Henderson

his client’s death penalty hearing gives rise, without more, to a powerful presumption of breakdown in the entire adversarial system... In other words, there may be exceptional cases in which counsel’s performance falls so grievously far below acceptable standards under Strickland's first prong that it functions as the equivalent of an actual conflict of interest, generating a presumption of prejudice and automatic reversal.

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Tex. Crim. Proc. Code Ann. art. 37.071(b) (Vernon 1981). In order for the death sentence to be imposed the jury was required to unanimously answer all three questions in the affirmative.

The Texas legislature amended the death penalty statute in 1991 in response to Penry v. Lynaugh, 492 U.S. 302 (1989). The current law instructs the jury that “it shall consider all evidence... including evidence of the defendant’s background or character or the circumstances of the offense which militates for or mitigates against the imposition of the death penalty.” Tex. Crim. Proc. Code Ann. art. 37.071(d)(1) (Vernon 1993).