Schriro v. Landrigan

 Argued: January 9, 2007

Decided: May 14, 2007

Facts

Thirty-seven states and the federal government permit the death penalty, also known as capital punishment, for crimes like murder and treason. If a defendant is convicted in a capital case, a judge usually holds a separate sentencing hearing to decide the convicted defendant’s punishment. The judge is required to consider mitigating evidence during the sentencing hearing because of the Eighth Amendment’s ban on cruel and unusual punishment. While mitigating evidence does not justify the crime, it may reduce the moral culpability (blame worthiness), and the sentence, of the defendant. In *Schriro v. Landrigan*, the Supreme Court considered whether a capital defendant received ineffective assistance from his attorney because the attorney did not present all of the mitigating evidence at the defendant’s sentencing hearing.

Jeffrey Landrigan was serving prison terms for murder and a prison stabbing when he escaped from his Oklahoma prison in 1989. Before he could be apprehended, Landrigan stabbed and strangled to death another man. After an Arizona jury convicted Landrigan of murder, his attorney attempted to present to the sentencing judge mitigating evidence from Landrigan’s mother and ex-wife. The witnesses would have testified that Landrigan had been a good father and that his birth mother used drugs and alcohol while pregnant. But Landrigan refused to let them testify, although his attorney had advised him strongly of its importance. The judge questioned Landrigan:

Judge: Mr. Landrigan, have you instructed your lawyer that you do not wish for him to bring any mitigating circumstances to my attention?

Landrigan: Yeah.

Judge: Do you know what that means?

Landrigan: Yeah.

Judge: Mr. Landrigan, are there mitigating circumstances I should be aware of?

Landrigan: Not as far as I’m concerned.

At the conclusion of the sentencing hearing, Landrigan added, “I think if you want to give me the death penalty, just bring it right on. I’m ready for it.” The judge sentenced Landrigan to death.

Landrigan later petitioned both state and federal courts for relief from the death penalty. He said that he had not received adequate assistance of counsel – a right guaranteed by the Sixth Amendment – because his attorney did not investigate all possibilities of mitigating evidence, especially the “biological component” of his violent behavior. He said he has a serious organic brain disorder, revealed by a later psychological evaluation, and that knowledge of this serious disorder would have changed the judge’s mind about his punishment.

All of the courts rejected Landrigan’s argument, except the *en banc* U.S. Court of Appeals for the Ninth Circuit. The Court of Appeals ruled that Landrigan’s attorney should have investigated other mitigating evidence, including his family’s history of drug and alcohol abuse and propensity for violence. It also said that Landrigan waived only his right to have his mother and ex-wife testify; he never waived all mitigating evidence. Arizona appealed to the U.S. Supreme Court.

Issue

Was Landrigan’s attorney ineffective because he failed to present mitigating evidence during Landrigan’s sentencing hearing, even though Landrigan had opposed the use of at least some, if not all, of the evidence?

Constitutional Amendments and Precedents

* **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

* **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

* **Strickland v. Washington (1984)**

In 1976, Washington committed three brutal stabbing murders, torture, kidnapping, attempted murder, and theft. Against the advice of his attorney, he confessed to the murders and pleaded guilty. During the sentencing phase of the trial, Washington’s attorney emphasized Washington’s remorse for his crimes. But the attorney did not request a psychiatric examination because, based on his conversations with Washington, he believed Washington did not have psychological problems. Washington was sentenced to death and petitioned the federal courts for relief based on ineffective assistance of counsel.

The Supreme Court ruled against Washington. While it declared that the Sixth Amendment’s right to counsel means that a defendant has a right to the *effective* assistance of counsel, the Court said that Washington’s representation was not deficient and that Washington suffered no prejudice. According to the Court, a criminal defendant can demonstrate ineffective assistance of counsel only if he can show that his attorney’s performance was “deficient” – that is, it fell below an “objective standard of reasonableness” -- and that there is a reasonable probability that if the attorney had performed adequately the result would have been different. But Washington’s attorney had a reasonable strategy of focusing on remorse, and while attorneys have a duty to make “reasonable investigations, or to make a reasonable decision that makes particular investigations unnecessary,” any new mitigating evidence in Washington’s case would not have changed the outcome.

* **Wiggins v. Smith (2003)**

In 1989, a jury convicted and sentenced Kevin Wiggins to death for drowning a 77-year-old woman in her bathtub. Wiggins claimed that his attorneys’ decision not to tell jurors about his troubled life history constituted ineffective assistance of counsel under the Sixth Amendment.

The Court ruled for Wiggins. It explained that Wiggins’s attorneys did not conduct a reasonable investigation of his life history, in part, because they failed to prepare a social history report, a standard practice in Maryland. The Court said that had the jury “been able to place [Wiggins's] excruciating life history on the mitigating side of the scale, there is a reasonable probability that at least one juror would have struck a different balance.” That life history included abuse while in the custody of his alcoholic mother, sexual molestation and repeated rape while in foster care, and his time spent homeless.

* **Iowa v. Tovar (2004)**

In 2001, Felipe Tovar was charged with drunk driving in Iowa for a third time. Under Iowa law, his third offense would be classified as a felony, not a misdemeanor. Tovar’s attorney claimed, however, that the first offense should not count. He argued that when he pleaded guilty the first time and waived his right to counsel, his waiver was not “fully knowing, intelligent, and voluntary” because the judge never told Tovar the advantages and disadvantages of self-representation.

The Court ruled against Tovar, explaining that his Sixth Amendment right to counsel was not violated. The Court reiterated that a waiver must be “knowing, intelligent, and voluntary” and that “intelligent” means that the defendant "knows what he is doing and his choice is made with eyes open.” Tovar’s waiver met the requirements because the judge informed Tovar of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments he faced if he pleaded guilty.

Arguments for Schriro (Arizona)

* The performance of Landrigan’s attorney cannot be called deficient because Landrigan clearly waived his right to present any mitigating evidence. When asked by the judge whether there was any relevant mitigating evidence, he answered, “Not as far as I’m concerned.”
* Like the defendant in *Iowa v. Tovar*, Landrigan understood the consequences of waiving his constitutional rights. His attorney had strongly urged him to allow the evidence, but Landrigan stopped him from using it. And he understood the consequences of the sentencing hearing, daring the judge to “bring [the death penalty] right on.”
* It does not matter that Landrigan’s attorney did not conduct an exhaustive investigation of Landrigan’s past or order a psychological evaluation because Landrigan would have prevented his attorney from using any of that evidence.
* This case is like *Strickland v. Washington*: no matter what mitigating evidence was presented, it would be outweighed by Landrigan’s heinous crimes. This was Landrigan’s second violent murder and he showed no remorse for his crimes.
* Giving defendants, like Landrigan, second and third chances to revisit their mitigating circumstances will force courts to reopen cases and slow to a crawl the use of the death penalty, making it a less effective deterrent to serious crimes.

Arguments for Landrigan

* Landrigan’s representation was deficient because his attorney failed to present all the mitigating evidence during the sentencing hearing. This case is like *Wiggins v. Smith*: Landrigan’s attorney failed to conduct a reasonable investigation of his troubled history.
* Landrigan’s waiver could not have been knowing and intelligent because he did not even know about all of the mitigating evidence, like his brain disorder. So, unlike the defendant in *Iowa v. Tovar*, Landrigan did not make his choice “with eyes open.”
* Even if the waiver was knowing and intelligent, he waived only his mother’s and ex-wife’s testimony. No other evidence was mentioned during the hearing.
* Evidence of Landrigan’s troubled history – including his birth-mother’s use of drugs during pregnancy, his organic brain disorder, and his time on the streets – could have been enough to convince the judge to reduce his sentence.
* In death penalty cases, defendants should be afforded every opportunity to demonstrate that they do not deserve to be sentenced to death.

Decision

Justice Thomas wrote the opinion of the Court, which Chief Justice Roberts and Justices Alito, Kennedy, and Scalia joined. Justice Stevens wrote a dissenting opinion. He was joined by Justices Breyer, Ginsburg, and Souter.

**Majority**

In a 5-4 decision, the Court ruled in favor of Arizona, finding that Landrigan was not entitled to a hearing on whether his attorney was ineffective. First, the Court explained that Landrigan had clearly informed his attorney not to present any mitigating evidence. And when asked whether there was any relevant mitigating evidence, Landrigan answered, “Not as far as I’m concerned.” Second, even if Landrigan’s attorney had failed to investigate other possible mitigating evidence, there was no prejudice to Landrigan because he would have interfered with its presentation. Third, assuming there is an “informed and knowing” requirement for Landrigan’s waiver, Landrigan clearly understood the consequences of telling the judge that there was no mitigating circumstances “as far as he was concerned.” Finally, any additional mitigating evidence would have made no difference in the sentencing; even if genetics made Landrigan the way he was, that evidence would have been outweighed by his menacing behavior and crimes.

**Dissent**

The four dissenting justices believed that Landrigan deserved at least a hearing to determine whether Landrigan’s attorney had been ineffective. They argued that significant mitigating evidence, which may have explained Landrigan’s crimes, was unknown to the judge at the time of the hearing. The dissent focused on three arguments. First, Landrigan’s counsel failed to investigate possible mitigating evidence. He did not complete a psychological evaluation or consult an expert witness about Landrigan’s mother’s drug use during pregnancy. And he did not develop a history of Landrigan’s troubled childhood. This meager investigation fell below the standard required in *Strickland v. Washington*. Second, Landrigan’s waiver of his mitigating evidence was not knowing and intelligent because he believed he was waiving only his right to present mitigating evidence from his mother and ex-wife’s. He did not even know about other mitigating evidence, including his organic brain disorder, because his attorney failed to conduct a proper investigation. In other words, without knowing about “the most significant mitigating evidence available to him, he could not have made a knowing and intelligent waiver of his constitutional rights.” Finally, as in *Wiggins v. Smith*, evidence of a turbulent childhood and organic brain disorder might well have convinced the judge that a death sentence was not appropriate.