

Mr. Gray appealed to the Supreme Court of North Carolina who affirmed his conviction and sentence. The United States Supreme Court denied *certiorari*. Mr. Gray then filed a motion for appropriate relief (MAR) alleging claims of ineffective counsel. Although Mr. Gray allowed mental health testimony at this phase, the MAR court denied relief. The Supreme Court of North Carolina denied *certiorari*, and Mr. Gray filed a writ of *habeas corpus* in United States District Court. The state asked for summary judgment, which the court granted on statute of limitations grounds under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA; 28 U.S.C. § 2244(d)(1)(A)). He then appealed to the U.S. Fourth Circuit Court of Appeals on grounds that his counsel rendered ineffective assistance by failing to investigate and develop, for sentencing purposes, evidence that Mr. Gray had a mental illness. The Fourth Circuit granted *habeas* relief.

Ruling and Reasoning

The Fourth Circuit's majority opinion relied heavily on the U.S. Supreme Court's opinion in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Court formulated a test for ineffective assistance claims in capital murder cases. To prevail, a petitioner must establish that his counsel's performance was deficient and that the deficiency prejudiced his defense. Mr. Gray contended that he had been denied his Sixth Amendment right to counsel, as his attorneys did not pursue mitigating evidence about his mental state at the time of the offense. Deficient performance requires failure to perform "reasonably" under "prevailing professional norms." In establishing deficiency, the appellate court must also be "highly deferential" to counsel and must emphasize the "facts of the particular case" as viewed "from counsel's perspective at the time." Once a deficiency (prong 1 above) is established, it must be shown to have had a "reasonable" probability of altering the outcome (prong 2).

In their application of *Strickland*, the Fourth Circuit focused primarily on the mental health evidence. It stated that an "objectively reasonable application of *Strickland* principles compels the conclusion that Gray's lawyers were prejudicially ineffective in their failure to investigate and develop, for sentencing purposes, evidence of Gray's impaired mental condition" (*Gray*, p 228). Despite Mr. Gray's refusal to cooperate in the development of said evidence, the

court averred that, in a capital case, a defense attorney must make reasonable efforts to "discover *all reasonably available* mitigating evidence" (*Wiggins v. Smith*, 539 U.S. 510, (2003) p 524). The defense's failure to investigate Mr. Gray's mental health fell short of "reasonable professional judgment." The court noted that a reasonable lawyer "would not count on his client's self assessment of his mental health, especially in a capital case" (*Gray*, p 231). It expounded that "there was an independent duty to investigate." It conducted a *de novo* evaluation of the evidence and determined that there was "reasonable probability that at least one juror would have struck a different balance." The court continued that it was not establishing a need to "always include presentation of expert evidence" (*Wiggins*, p 537). The Fourth Circuit ruled the North Carolina MAR court unreasonably applied the standards outlined by the Supreme Court in *Strickland*. Further, an objective application of the principles outlined by *Strickland* demonstrate that Mr. Gray's counsel was prejudicially ineffective in failing to investigate, for sentencing purposes, evidence of Mr. Gray's mental illness.

Discussion

For mental health professionals working in capital cases, this case highlights the import of collecting all available mental health records and any other evidence (from family and friends) that might reveal the relative mental health of a capital defendant. The Fourth Circuit emphasized that, in some capital cases, mental health evidence may be the most important mitigating "counterweight" to aggravating factors presented by the prosecution. If not thoroughly developed, the defendant may be denied due process. This is true even if the defendant denies that there is anything wrong with him.

Not Guilty by Reason of Somnambulism

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State Supreme Court Overturns a Murder Conviction After Finding That the Trial Court Erred in Assigning a Sleepwalking Defendant an Insanity Defense

In *Smith v. State*, 663 S.E.2d 155 (Ga. 2008), the Supreme Court of Georgia reversed a trial court's murder conviction of Tavaris Smith because of its error in classifying Mr. Smith's defense as an insanity defense rather than allowing him to assert a defense of unconsciousness.

Facts of the Case

On June 5, 2003, Tavaris Smith's wife died of a single gunshot wound to the head while asleep in bed. Mr. Smith claimed that he had a sleep disorder and had shot his wife during an episode of sleepwalking.

On August 15, 2005, a jury found Mr. Smith guilty of malice murder. On August 29, 2005, Mr. Smith filed a motion for a new trial. On March 20, 2007, he filed an amended motion for a new trial, which the trial court denied. On August 15, 2007, Mr. Smith filed an appeal. The appeal was argued before the Supreme Court of Georgia on February 11, 2008, and the case was decided on June 30, 2008.

Before the trial, Mr. Smith made it known to the court that he was preparing evidence as well as expert testimony that would show that he had a physiological sleep disorder that resulted in sleepwalking and states of confusional arousal. Mr. Smith claimed that he shot his wife while sleepwalking and therefore had neither the awareness of his actions nor the intent to kill.

Notably, Mr. Smith did not assert an insanity defense under the Official Code of Georgia Annotated (OCGA) § 17-7-130.1. The trial court, despite his objections, appointed an expert witness under that statute to examine him and assigned to him a claim of not guilty by reason of insanity. OCGA § 17-7-130.1 requires that the "court shall appoint at least one psychiatrist or licensed psychologist to examine the defendant and to testify at the trial" when the defendant claims an insanity defense.

Despite further objections to the imposition of the insanity defense, during the trial the jury was instructed:

... when a defendant interposes the defense of insanity, the court must appoint an expert to examine the defendant and to testify at trial; that insanity is defined as the lack of mental capacity to distinguish between right and wrong at the time of the crime; and that the court had classified Mr. Smith's defense as an insanity defense" (*Smith*, p 156).

The court also instructed the jury that the burden of proving insanity at the time of the crime by a preponderance of the evidence rested on the defense. Mr. Smith's psychiatric expert testified that he was not legally insane. The court-appointed expert also testified that Mr. Smith did not appear to have any psychiatric pathology. Both experts testified that he may have had a sleep disorder including confusional arousal. Mr. Smith was found guilty of malice murder.

Mr. Smith's appeal was based on the contention that the trial court erred when it only would allow him to present a defense of not guilty by reason of insanity.

Ruling and Reasoning

The Supreme Court of Georgia reversed the judgment of the trial court and unanimously held that "the trial court erred in classifying Mr. Smith's defense as an insanity defense, in informing the jury that it was classifying Mr. Smith's defense as an insanity defense and in instructing the jury on the defense of insanity during its charge" (*Smith*, p 156).

The Georgia Supreme Court observed that the evidence of record was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that Mr. Smith was guilty of malice murder, but the trial court's imposition of the insanity defense was a significant hindrance to his chosen defense—that he did not commit the act voluntarily and with criminal intent.

The court noted that the Model Penal Code § 2.01(2)(b) states that a person is not guilty of an offense if it is committed involuntarily. Bodily movements during unconsciousness or sleep are specifically deemed involuntary acts. The court also reviewed the holdings of other courts that have taken cases involving unconsciousness disorders, including sleep disorders, and observed that most of these courts have issued holdings that these disorders comprise a defense distinct from insanity. The holdings also indicated that defendants who committed criminal acts as a result of these disorders were not criminally responsible secondary to a lack of volition and criminal intent.

The supreme court further supported the distinction between insanity defenses and defenses of unconsciousness when it cited a review article by Mike Horn in the *Boston College Law Review* (A rude awakening: what to do with the sleepwalking defense? B C

L Rev 46:149, 2004). Mr. Horn's review noted that few courts continue to categorize criminal acts committed while sleepwalking as an insanity defense. Much of the distinction relies on the facts that those found criminally insane have a permanent or semi-permanent mental defect, whereas those with sleep disorders do not. In addition, the therapeutic commitment provided for the criminally insane would provide little to no benefit to a sleepwalking defendant.

Discussion

With this ruling, the Supreme Court of Georgia makes it clear that it considers criminal acts committed while sleepwalking or during an episode of unconsciousness or semiconsciousness due to a sleep disorder to be a defense distinct from the insanity defense. Most courts that have considered the question have held that the insanity defense is an improper fit for what is best classified as a defense of unconsciousness. Sleepwalking and other sleep disorders do not fit the definition of legal insanity, and affected defendants are therefore at a great disadvantage when required to provide evidence of lack of culpability by means of an insanity defense.

Claim of Ineffective Assistance of Counsel

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A Court of Appeals Denies Habeas Corpus Relief to a Defendant Who Claims Ineffective Assistance of Counsel for Disregarding Expert Evidence and Defendant's Doubts and Obeying the Defendant's Wish to be Found Competent

In *Crawley v. Dinwiddie*, 533 F.3d 1226 (10th Cir. 2008), the Tenth Circuit Court of Appeals affirmed a lower court ruling rejecting a defendant's claim of ineffective assistance of counsel, concluding that his attorney did not perform deficiently in abiding by Mr. Crawley's wishes and arguing that he was competent to stand trial.

Facts of the Case

Leon Crawley was charged in Oklahoma with possession of a stolen vehicle. He had two previous felony convictions and, if convicted of a third felony, faced more than 20 years in prison. The state offered Mr. Crawley a six-year prison sentence in exchange for a guilty plea. He rejected the plea bargain and insisted on going to trial. Mr. Crawley's attorney, Greg Graves, requested that his defendant undergo a competency determination. Mr. Graves stated that Mr. Crawley's "obsession with matters not relevant to his defense" was interfering with his ability to communicate with counsel. The trial court appointed Dr. William Cooper to examine Mr. Crawley. At a competency hearing, Dr. Cooper testified that Mr. Crawley was "somewhat guarded and suspicious," displayed mild thought disorganization, "heard voices," believed "God had been speaking to him," and exhibited "paranoid thinking." Dr. Cooper concluded that Mr. Crawley "was able to appreciate the nature of the charges against him but was incompetent to stand trial due to inability to consult with his attorney and rationally assist in the preparation of his defense." Mr. Crawley rejected Dr. Cooper's conclusions and asserted that he was competent and that he wanted to stand trial. The state then called Mr. Crawley, who testified to his understanding of the proceedings and informed the jury that he was competent to stand trial. The question of Mr. Crawley's competence was then put to the jury, where, paradoxically, the government argued that Mr. Crawley was incompetent and the defense, though suppressing misgivings, argued that the defendant was competent. Mr. Graves did not call any witnesses on Mr. Crawley's behalf, but argued, contrary to the state's position and despite Dr. Cooper's opinion, that the evidence supported a finding of competency. The jury found Mr. Crawley competent. He was later convicted and sentenced to 25 years in prison.

Mr. Crawley appealed to the Oklahoma Court of Criminal Appeals. He argued that his conviction should be reversed because he was forced to testify against his will at the competency hearing; insufficient evidence was submitted to support a jury finding of competency to stand trial; and his counsel was ineffective during the competency hearing. The Oklahoma Court of Criminal Appeals ruled that, under Oklahoma Law, Mr. Crawley could be called to testify at the competency hearing because his