

tal health problems that could potentially interfere with a defendant's competency to plead guilty. Should the court have affirmed the PCR court's decision, there would have likely been a substantial increase in competency to stand trial evaluation requests. This would tax available resources, overburden forensic evaluators, and delay legal proceedings.

By reversing the PCR court's findings, the court closed the door to convicted inmates seeking post-conviction relief on the mere fact that they were taking medication at the time of their plea and to those who make uncorroborated claims that taking such medication affected their ability to enter a valid plea. The court implied that convicted inmates' testimony alone during PCR hearings was an insufficient basis on which to grant relief; it stated that they have to provide evidence that the medications affected their ability to understand the plea proceedings.

The court did not specifically delineate the evidence that is required. Medical records documenting mental health concerns at the time of plea, medication(s) prescribed, and adverse effects from the medications on their mental faculties could provide such evidence. Another source of such evidence could be the use of expert testimony at the PCR hearing. An expert could testify about legitimate mental health problems, any mind-altering effects of medications, and the impact of these factors on an individual's competency to enter a plea.

Testimony of Counsel Required for Applicants Seeking Postconviction Relief

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U.S. Supreme Court Denies Writ of Certiorari to an Applicant Who Was Denied Postconviction Relief in Case Where Counsel Did Not Hire Mental Health Expert

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In *Reeves v. Alabama*, 138 S.Ct. 22 (2017), Matthew Reeves petitioned the U.S. Supreme Court for a writ of *certiorari* on claims of ineffective assistance of counsel for failure to hire a mental health expert. The petition for writ was denied. Justice Sotomayor, along with Justices Ginsburg and Kagan, wrote a dissent to the denial of *certiorari*, which is presented here.

Facts of the Case

Matthew Reeves was charged with capital murder for the 1996 killing and robbery of Willie Johnson. Mr. Reeves was 18 years old at the time of the crime. Prior to trial, his attorneys (Blanchard McLeod, Jr., and Marvin Wiggins) filed a motion requesting the trial court appoint and approve funding to pay for Dr. John Goff, a clinical neuropsychologist, to "evaluate, test, and interview" Mr. Reeves (*Reeves*, p 23).

The trial court denied the motion. Mr. Reeves' counsel were granted a re-hearing. His attorneys explained that they needed the expertise of a clinical neuropsychologist or "a person of like standing and expertise" (*Reeves*, p 23) to review "hundreds of pages" of mental health data, evaluate Mr. Reeves for mental illness or intellectual disability, and present this information to the jury during the sentencing phase. After reconsidering, the trial court granted the funding and appointment requests.

Before trial, Mr. McLeod withdrew as counsel and was replaced by Thomas Goggans. Mr. Wiggins remained as counsel, and he and Mr. Goggans represented Mr. Reeves at trial. Despite receiving funding and an appointment order from the court, Mr. Reeves' trial counsel never hired Dr. Goff or another expert to evaluate Mr. Reeves. The trial commenced, and the jury convicted Mr. Reeves of capital murder.

During the sentencing phase, Mr. Reeves called three mitigation witnesses: Dr. Kathleen Ronan (a court-appointed clinical psychologist), the detective in charge of the murder investigation, and Mr. Reeves' mother. Dr. Ronan evaluated Mr. Reeves for competency to stand trial and his mental state at the time of the offense (i.e., trial phase evaluations). She met with trial counsel for the first time shortly before she testified; she informed Mr. Reeves' attorneys

about the significant differences between trial phase and capital sentencing phase evaluations and the subsequent limitations to her testimony. Dr. Ronan testified that she gave Mr. Reeves the verbal portion of an intelligence test; based on that portion of the assessment, she concluded that he was “at the borderline of mental retardation” (*Reeves*, p 24). The detective testified to the physical conditions of Mr. Reeves’ home. Mr. Reeves’ mother testified about his childhood, including his history of repeating two grades, attending “special classes,” receiving mental health treatment beginning in second or third grade, and being shot in the head a few months before Mr. Johnson’s murder.

After deliberating for less than an hour, the jury recommended the death penalty. Despite the presence of two mitigating circumstances (i.e., Mr. Reeves’ age and a lack of significant criminal history), the judge found that the aggravating circumstances outweighed mitigating factors and sentenced Mr. Reeves to death. Mr. Goggans continued to represent Mr. Reeves during direct appeal. After his conviction and sentence were upheld, Mr. Reeves sought post-conviction relief (PCR) with the assistance of new counsel.

In his petition for PCR, Mr. Reeves asserted ineffective assistance of counsel during the trial and appellate process. In part, he claimed trial counsel was ineffective because they failed to hire Dr. Goff or another neuropsychologist to evaluate him for intellectual disability, failed to present expert testimony of his intellectual disability, and failed to conduct an adequate mitigation evaluation.

Mr. Reeves did not call Mr. McLeod, Mr. Goggans, or Mr. Wiggins to testify in the PCR hearing. Instead, he called Dr. Goff, who evaluated Mr. Reeves prior to the PCR hearing and concluded that he had intellectual disability; he also called Dr. Karen Salekin, a forensic and developmental psychologist, who conducted a mitigation evaluation. Mr. Reeves also provided an affidavit from Dr. Ronan concerning the limitations of her earlier evaluation and information she provided to trial counsel. The state presented one rebuttal witness: Dr. Glen King, a clinical forensic psychologist, who testified that Mr. Reeves “was in the borderline range of intellectual ability but was not intellectually disabled” (*Reeves*, p 25).

The PCR court held that Mr. Reeves failed to prove his ineffective assistance of counsel claims. The

Alabama Court of Criminal Appeals affirmed on the basis that Mr. Reeves did not present testimony of his former counsel, stressing that a PCR applicant “must, at his evidentiary hearing, question trial counsel regarding his or her actions and reasoning” (*Reeves*, p 26). The Alabama Supreme Court denied review.

Mr. Reeves appealed to the U.S. Supreme Court. He contended that the Alabama Court of Criminal Appeals’ position that an applicant must present his counsel’s testimony to establish deficient performance contradicted precedent set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The U.S. Supreme Court denied *certiorari*. There is no majority opinion on the denial of *certiorari*.

Dissent

Justice Sotomayor wrote a dissenting opinion, which was joined by Justices Ginsburg and Kagan. The dissenting justices relied on *Strickland* and its progeny (*Wiggins v. Smith*, 539 U.S. 510 (2003) and *Porter v. McCollum*, 558 U.S. 30 (2009)), in addition to *Massaro v. United States*, 538 U.S. 500 (2003), to outline that Mr. Reeves’ PCR hearing “was tainted by this constitutional error” (*Reeves*, p 26) and that requiring counsel to testify to establish ineffective assistance was unreasonable. She stated that the U.S. Supreme Court has never required a defendant to present evidence of his counsel’s actions or reasoning in the form of testimony from counsel, nor has it rejected an ineffective assistance of counsel claim solely due to a lack of such testimony.

Justice Sotomayor indicated that *Strickland* and its progeny established that a court should look to the full record presented to determine whether the defendant satisfied his burden of proving deficient performance. She stated that lack of counsel’s testimony does not absolve a court of its duty to look at the entire record. Justice Sotomayor mentioned that trial counsel’s testimony defending the justification of their strategy does not support adequate performance when the entire record rebuts this justification. In circumstances where counsel does not testify but the defendant offers other evidence, she stated that the court can presume that counsel would have justified his actions as strategic and then consider whether the record rebuts this justification.

Justice Sotomayor also mentioned that an imposition of a *per se* rule requiring counsel’s testimony contradicted *Massaro*, which established that, in

cases where trial counsel's ineffectiveness is blatant from the record, appellate counsel can raise the issue on direct appeal or an appellate court can address the deficiencies *sua sponte*. This ruling further reinforced that counsel's testimony was not necessary. She added that looking at the whole record made "good practical sense" because counsel may be unwilling or unable to testify (e.g., memory loss, death). Justice Sotomayor stated that these circumstances should not negate claims of ineffective assistance of counsel.

Justice Sotomayor stated that the Alabama Court of Criminal Appeals never explained, in light of the record before it, why the decisions that Mr. Reeves' counsel made were reasonable. She opined that the court of criminal appeals rested its decision solely on the fact that Mr. Reeves did not call counsel to testify at the PCR hearing. She stated that the word "must" was not "mere stock language" and that the court "unquestionably applied this requirement" to Mr. Reeves' claim. At the outset of its analyses, the court of criminal appeals reported that Mr. Reeves' failure to call counsel to testify was "fatal to his claims of ineffective assistance of counsel" (*Reeves*, p 28). Justice Sotomayor pointed out that the court of criminal appeals emphasized Mr. Reeves' failure to call his counsel to testify at five different points in its opinion. She opined that the court's failure to consider non-counsel testimony was "baffling."

Discussion

Justice Sotomayor outlined specific examples of counsel's deficient performance found within the full record. Counsel had repeatedly requested funds to hire an expert to assess Mr. Reeves in preparation for the sentencing phase but had failed to retain such an expert. The dissent outlined that counsel described possession of "hundreds of pages" of mental health data and asserted a need for an expert to review these records and evaluate Mr. Reeves. The failure to hire such an expert after presenting that information raises many questions, including how attorneys assess the need to obtain mental health evaluations and the factors involved in these decisions. These decisions are clear in some cases, but certainly not all. In this case, the record is silent about the decision-making process because Mr. Reeves failed to call his attorneys to testify in the PCR hearing.

Furthermore, once the decision is made that an opinion is needed regarding a mental health concern, the type of evaluation needed must be determined. In

Mr. Reeves' trial, a court-appointed expert completed trial phase evaluations. During the sentencing phase, the same expert was asked to provide testimony as a mitigation witness, over her objections that the trial phase evaluations she performed were insufficient for mitigation. During the PCR hearing, a mitigation evaluation was completed, and several factors were identified that had not been considered in the sentencing phase. This case highlights the need for counsel to be aware that forensic evaluations, especially in capital cases, differ depending on the question and that the completion of one evaluation is not generalizable to all questions that may arise during both phases of capital cases. Although forensic evaluations may cover some of the same content (e.g., diagnosis), they differ based on the purpose of the evaluation and complexity of the case. Open communication and collaboration between counsel and mental health experts are necessary to provide an optimal outcome.

Disclosures of financial or other potential conflicts of interest: None.

Excessive Force Was Not Used in Arrest of Mentally Ill Man Who Died Shortly After Restraint

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Sheriff's Deputies, Knowing a Citizen Was Mentally Ill, Used Force by Taser; Objective Reasonableness Test Employed; Deputies and Others Received Summary Judgment Against § 1983 and ADA Claims

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In *Roell v. Hamilton County*, 870 F.3d 471 (6th Cir. 2017), the U.S. Court of Appeals for the Sixth Circuit upheld that Gary Roell's Fourth