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Case Summary of *SCHRIRO V. LANDRIGAN* United States Supreme Court Docket No. 05-1575 Oral Argument: January 9, 2007

Questions Presented for Review:

- (1) In light of the highly deferential standard of review required under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), did the Ninth Circuit err by holding that the state court unreasonably determined the facts when it found that Jeffrey Landrigan "instructed his attorney not to present any mitigating evidence at the sentencing hearing?"
- (2) Did the Ninth Circuit err by finding that the state court's analysis of Landrigan's ineffective assistance of counsel claim was objectively unreasonable under *Strickland v. Washington*, 466 U.S. 668 (1984)? Did the Ninth Circuit make this decision despite the absence of any contrary authority from this Court in cases in which (a) the defendant waives presentation of mitigation evidence and impedes counsel's attempts to do so, or (b) the evidence the defendant subsequently claims should have been presented is not mitigating?

Factual Background:

The Murder

Jeffrey Landrigan murdered Chester Dean Dyer in December 1989. In November 1989, Landrigan escaped from an Oklahoma Department of Corrections facility where he was serving prison terms for a 1982 murder and a 1986 prison stabbing.

On December 13, Landrigan went to the victim's apartment in Phoenix, where the two of them drank beer and socialized. At some point, Landrigan stabbed Dyer and strangled him to death with an electrical cord. Landrigan left the victim face down on the bed in a pool of blood with facial lacerations and puncture wounds on his body. An ace of hearts, from a deck of cards depicting naked men in sexual poses, was carefully propped up on the victim's back, and the rest of the deck was strewn across the bed. The apartment was ransacked, and the victim's paycheck was missing.

When questioned, Landrigan denied knowing the victim or having ever been in his apartment. However, he was wearing the victim's shirt when he was arrested, and seven fingerprints taken from the victim's apartment matched Landrigan's. A shoe impression found in spilled sugar at the apartment matched Landrigan's tennis shoes, and blood on one of Landrigan's shoes matched blood on the victim's shirt.

The Sentencing

After a jury convicted Landrigan of murder, burglary and theft, the trial court considered evidence of aggravating and mitigating circumstances to determine the appropriate sentence. The State established two statutory aggravating circumstances: (1) Landrigan's prior conviction of a felony involving the use of violence; and (2) commission of the murder for pecuniary gain. Defense counsel presented a sentencing memorandum detailing evidence of Landrigan's long history of drug abuse as possible mitigation, but Landrigan impeded counsel's efforts to develop other potentially mitigating evidence.

Landrigan's counsel subpoenaed Landrigan's biological mother and his ex-wife to testify at the sentencing hearing. But, Landrigan instructed them not to cooperate or testify. When counsel attempted to put on the record the type of mitigating evidence he planned to elicit from Landrigan's family members, Landrigan repeatedly interrupted and undermined counsel's efforts to portray Landrigan in a favorable light. When defense counsel attempted to soften the fact that Landrigan had previously murdered his best friend, Greg Brown, suggesting that the murder had elements of self-defense, Landrigan interrupted him to make clear that his attorney was not telling the story correctly. He interrupted again when counsel tried to couch Landrigan's assault on another inmate as self defense. Landrigan interrupted again when his lawyer was trying to discuss Landrigan's time as a "loving, caring husband" who was taking care of his wife and her child by working at a golf course to say he "wasn't just working," but that he was also "doing robberies." When the court asked him for comments on his own behalf, he said:

Yeah. I'd like to point out a few things about how I feel about the way this [expletive], this whole scenario went down. I think that it's pretty [expletive]ing ridiculous to let a fagot[sic] be the one to determine my fate, about how they come across in his defense, about I was supposedly [expletive]ing this dude. This never happened. I think the whole thing stinks. I think if you want to give me the death penalty, just bring it right on. I'm ready for it.

The trial court found as mitigation that Landrigan loved his family and his family loved him, and that the jury had not found premeditation. The court ruled, however, that the mitigation was insufficient to warrant leniency and imposed a death sentence. The court stated:

I find the nature of the murder in this case is really not out of the ordinary when one considers first degree murder, but I do find that Mr. Landrigan appears to be somewhat of an exceptional human being. It appears that Mr. Landrigan is a person who has no scruples and no regard for human life and human beings and the right to live and enjoy life to the best of their ability, whatever their chosen lifestyle might be. Mr. Landrigan appears to be an amoral person.

The court also imposed a 20-year prison term for the burglary conviction and 6 months in jail for theft.

The Appeal and Other Post-Conviction Proceedings:

Landrigan appealed his convictions and sentences to the Arizona Supreme Court. In 1993, the Court denied the appeal and upheld Landrigan's death sentence after independently reviewing the aggravating and mitigating circumstances. *Arizona v. Landrigan*, 176 Ariz. 1, 859 P.2d 111 (1993).

In January 1995, Landrigan filed a petition for post-conviction relief in state court, raising several claims, including one that his trial counsel was ineffective at sentencing for failing to present mitigating evidence. Landrigan submitted an affidavit stating that if his attorney had discussed with him the theory of a biological component to violence in his family, he would have allowed that type of evidence. The same judge who sentenced Landrigan considered and rejected the post-conviction

claim. The judge noted that Landrigan had expressly waived presentation of *any* mitigation, and that Landrigan's "statements at sentencing belie his new-found sense of cooperation." The judge denied Landrigan's motion for rehearing, and the Arizona Supreme Court denied Landrigan's petition for review from that ruling.

In October 1996, Landrigan filed a preliminary petition for writ of habeas corpus and application for appointment of counsel, then filed an amended petition on July 31, 1997. The amended petition included a claim that counsel was ineffective at sentencing for not presenting evidence regarding a biological component underlying Landrigan's history of violence. While the federal habeas petition was pending, Landrigan filed a successive petition for post-conviction relief in state court, again asserting a claim of ineffective assistance of counsel. The trial court denied Landrigan's successive petition for post-conviction relief on September 15, 1999 on the basis of preclusion because the claims could have been raised previously.

In December 1999, the federal district court rejected Landrigan's ineffective assistance of counsel claim and denied his petition. In rejecting the claim, the district court bypassed the deficient performance prong of the *Strickland* analysis, and found that Landrigan "failed to demonstrate he was prejudiced by his trial counsel's alleged failure to discover and present mitigation evidence."

Landrigan appealed that ruling to the Ninth Circuit, and in 2001 a unanimous three-judge panel upheld the district court decision. The Ninth Circuit agreed to consider the case *en banc* and subsequently withdrew the panel decision. In March 2006, an *en banc* majority reversed, holding that Landrigan had alleged a colorable claim for relief and was entitled to an evidentiary hearing regarding his claim of ineffective assistance of counsel at sentencing. Two judges dissented from the *en banc* decision.

The Arizona Attorney General's Office sought certiorari review in the United States Supreme Court, which the Court granted on September 26, 2006.

Summary of Argument:

The Ninth Circuit failed to accord proper deference to the state court's factual finding that Landrigan "instructed his attorney not to present any evidence at the sentencing hearing." The Ninth Circuit further erred by finding that the state court's ruling rejecting Landrigan's ineffective assistance of counsel claim unreasonably applied this Court's *Strickland* jurisprudence.

Under 28 U.S.C. § 2254(d), which codifies the AEDPA amendments to the federal habeas statute, a habeas petitioner must demonstrate that the state court's adjudication of the merits resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court, or resulted in a decision that was based on an unreasonable determination of the facts. Factual determinations by a state court are presumed correct, and a habeas petitioner bears the burden of rebutting the presumption of correctness by clear and convincing evidence.

The Ninth Circuit's conclusion that the state court unreasonably determined the facts by finding that Landrigan waived presentation of mitigating evidence is contrary to the highly deferential standard of review of the AEDPA. The evidence fully supports the state court's factual finding that Landrigan affirmatively waived presentation of any mitigation. In addition, the state courts resolved Landrigan's ineffective assistance of counsel claim consistent with decisions from this Court, including *Strickland*, 466 U.S. at 691, and *Blystone v. Pennsylvania*, 494 U.S. 299 (1990).

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