

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

**JENNINGS v. STEPHENS, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

No. 13–7211. Argued October 15, 2014—Decided January 14, 2015

Petitioner Jennings sought federal habeas relief based on three theories of ineffective assistance of counsel during the punishment phase of his state capital murder trial. The District Court granted relief on his two “*Wiggins* theories”—that counsel failed to present evidence of a deprived background and failed to investigate evidence of mental impairment, see *Wiggins v. Smith*, 539 U. S. 510—but not on his “*Spisak* theory”—that counsel expressed resignation to a death sentence during his closing argument, see *Smith v. Spisak*, 558 U. S. 139. The court ordered Texas to release Jennings unless, within 120 days, the State granted him a new sentencing hearing or commuted his death sentence. The State attacked the *Wiggins* theories on appeal, but Jennings defended on all three theories. The Fifth Circuit reversed the grant of habeas corpus under the two *Wiggins* theories and determined that it lacked jurisdiction over the *Spisak* claim. Implicitly concluding that raising this argument required a cross-appeal, the court noted that Jennings neither filed a timely notice of appeal, see Fed. Rule App. Proc. 4(a)(1)(A), nor obtained the certificate of appealability required by 28 U. S. C. §2253(c).

Held: Jennings’ *Spisak* theory was a defense of his judgment on alternative grounds, and thus he was not required to take a cross-appeal or obtain a certificate of appealability to argue it on appeal. Pp. 4–12.

(a) Because Jennings is an appellee who did not cross-appeal, he may “urge” his *Spisak* theory unless doing so would enlarge his rights or lessen the State’s rights under the District Court’s judgment.

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United States v. American Railway Express Co., 265 U. S. 425, 435. Jennings' rights under the judgment were release, retrial, or commutation within a fixed time, at the State's option, and his *Spisak* claim, if accepted, would give him no more. The State's rights under the judgment were to retain Jennings in custody pending retrial or to commute his sentence; the *Spisak* claim, if accepted, would not further encumber the State. The State contends that, because the District Court's opinion entitled Jennings only to retrial (or resentencing) without the challenged errors, each additional basis asserted by Jennings sought to lessen the State's rights at retrial, and thus requires a cross-appeal. But this view is contrary to the ordinary behavior of courts, which reduce their opinions and verdicts to judgments precisely to define the parties' rights and liabilities. A prevailing party seeks to enforce a district court's judgment, not its reasoning. *Rogers v. Hill*, 289 U. S. 582, 587. Thus, any potential claim that would have entitled Jennings to a new sentencing proceeding could have been advanced consistent with *American Railway*. Pp. 4–9.

(b) *Helvering v. Pfeiffer*, 302 U. S. 247, and *Alexander v. Cosden Pipe Line Co.*, 290 U. S. 484, would be in considerable tension with *American Railway* if they were read, as the State insists, as requiring Jennings to raise his *Spisak* claim on cross-appeal even if his rights under the court's judgment would remain undisturbed. *Pfeiffer* and *Alexander* involved disputes over multiple discrete federal tax liabilities, and the assertion of additional tax liabilities or defenses necessarily sought to enlarge or to reduce the rights of the Internal Revenue Service Commissioner. In contrast, Jennings, whether prevailing on a single theory or all three, sought the same, indivisible relief: a new sentencing hearing. Thus, *Pfeiffer* and *Alexander* cannot be viewed as contradicting the “inveterate and certain” *American Railway* rule. *Greenlaw v. United States*, 554 U. S. 237, 245. Pp. 9–11.

(c) The question whether 28 U. S. C. §2253(c)'s certificate of appealability requirement applies to cross-appeals need not be addressed here, for it is clear that the provision does not embrace the defense of a judgment on alternative grounds. Pp. 11–12.

537 Fed. Appx. 326, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which KENNEDY and ALITO, JJ., joined.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 13–7211

ROBERT MITCHELL JENNINGS, PETITIONER *v.*
WILLIAM STEPHENS, DIRECTOR, TEXAS DE-
PARTMENT OF CRIMINAL JUSTICE, COR-
RECTIONAL INSTITUTIONS DIVISION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[January 14, 2015]

JUSTICE SCALIA delivered the opinion of the Court.

Petitioner Robert Mitchell Jennings was sentenced to death for capital murder. He applied for federal habeas corpus relief on three theories of ineffective assistance of counsel, prevailing on two. The State appealed, and Jennings defended his writ on all three theories. We consider whether Jennings was permitted to pursue the theory that the District Court had rejected without taking a cross-appeal or obtaining a certificate of appealability.

I

In July 1988, petitioner Robert Mitchell Jennings entered an adult bookstore to commit a robbery. Officer Elston Howard, by unhappy coincidence, was at the same establishment to arrest the store’s clerk. Undeterred, Jennings shot Howard four times, robbed the store, and escaped. Howard died from his wounds.

Howard was merely the most recent victim of Jennings’ criminality. The State adjudicated Jennings a delinquent at 14, convicted him of aggravated robbery at 17, and of

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additional aggravated robberies at 20. He murdered Officer Howard only two months after his most recent release from prison.

Jennings was arrested, tried, and convicted of capital murder, and the State sought the death penalty. During the punishment phase, the State introduced evidence of Jennings' lengthy and violent criminal history. Jennings' attorney called only the prison chaplain, who testified about Jennings' improvement and that Jennings was not "incurable." Jennings' attorney acknowledged the difficulty of his sentencing defense in his closing remarks, commenting that he could not "quarrel with" a death sentence, but was nonetheless pleading for mercy for his client. The jury returned a special verdict, consistent with Texas law, that Jennings acted deliberately in the murder and that he would present a continuing threat to society. The trial court sentenced Jennings to death. Texas courts affirmed Jennings' conviction and sentence and denied postconviction relief. *Jennings v. State*, No. AP-70911 (Tex. Crim. App., Jan. 20, 1993); *Ex parte Jennings*, 2008 WL 5049911 (Tex. Crim. App., Nov. 26, 2008).

Jennings applied for federal habeas corpus relief, asserting, as relevant here, three theories of ineffective assistance of counsel in the punishment phase of his trial. Jennings first claimed trial counsel was ineffective for failing to present evidence of his disadvantaged background, including that his conception was the product of his mother's rape, that his mother was only 17 when he was born, and that he grew up in poverty. Jennings offered his mother and sister as witnesses.

Jennings next argued that trial counsel was ineffective for failure to investigate and to present evidence of Jennings' low intelligence and organic brain damage. His trial attorney admitted in affidavit that he failed to review the case files from Jennings' prior convictions, which contained a report suggesting Jennings suffered from mild

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mental retardation and mild organic brain dysfunction. (The report also suggested that Jennings malingered, feigning mental illness in order to delay proceedings.) Jennings argued that trial counsel should have examined Jennings' prior case files, investigated Jennings' mental health problems, and presented evidence of mental impairment in the punishment phase.

Finally, Jennings argued that counsel was constitutionally ineffective for stating that he could not "quarrel with" a death sentence. According to Jennings, this remark expressed resignation to—even the propriety of—a death sentence.

Jennings cited our decision in *Wiggins v. Smith*, 539 U. S. 510 (2003), as establishing constitutional ineffectiveness when counsel fails to investigate or to introduce substantial mitigating evidence in a sentencing proceeding. Though he did not cite our decision in *Smith v. Spisak*, 558 U. S. 139 (2010), he also argued that counsel's closing remarks amounted to constitutional ineffectiveness. The parties referred to these alleged errors as the "*Wiggins* errors" and the "*Spisak* error"; we use the same terminology.

The federal habeas court granted Jennings relief on both of his *Wiggins* theories, but denied relief on his *Spisak* theory. *Jennings v. Thaler*, 2012 WL 1440387 (SD Tex., Apr. 23, 2012). The court ordered that the State "shall release Jennings from custody unless, within 120 days, the State of Texas grants Jennings a new sentencing hearing or resents him to a term of imprisonment as provided by Texas law at the time of Jennings['] crime." *Id.*, at *7.

The State appealed, attacking both *Wiggins* theories (viz., trial counsel's failure to present evidence of a deprived background and failure to investigate evidence of mental impairment). Jennings argued before the Fifth Circuit that the District Court correctly found constitu-

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