SUPREME COURT OF THE UNITED STATES

MATTHEW REEVES *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

No. 16–9282. Decided November 13, 2017

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting from the denial of certiorari.

Petitioner Matthew Reeves was convicted by an Alabama jury of capital murder and sentenced to death. He sought postconviction relief in state court based on, as relevant here, several claims of ineffective assistance of trial and appellate counsel.[1] Among those claims, Reeves argued that his trial counsel was ineffective for failing to hire an expert to evaluate him for intellectual disability, despite having sought and obtained funding and an appointment order from the state trial court to hire a specific neuropsychologist. His postconviction counsel subsequently hired that same neuropsychologist, who concluded that Reeves was, in fact, intellectually disabled. Reeves contended that this and other evidence could have been used during the penalty phase of his trial to establish mitigation.

The Alabama Circuit Court held an evidentiary hearing on Reeves' postconviction petition, at which Reeves pre-

[1] Reeves also argued in his postconviction petition that he was constitutionally ineligible for the death penalty pursuant to *Atkins* v. *Virginia*, 536 U. S. 304 (2002). The Alabama Court of Criminal Appeals rejected that claim, and Reeves does not challenge that decision in his petition for writ of certiorari. Instead, he maintains that regardless of whether he is ineligible for execution under *Atkins*, he has the right to effective assistance in presenting evidence of his intellectual disability as mitigation during the penalty phase of his trial. Pet. for Cert. 10, n. 2.

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sented substantial evidence regarding his intellectual disability and his counsel's performance. He did not, however, call his trial or appellate counsel to testify. The court denied the petition, and the Alabama Court of Criminal Appeals affirmed. In doing so, the Court of Criminal Appeals explained that a petitioner seeking postconviction relief on the basis of ineffective assistance of counsel must question his counsel about his reasoning and actions. Without considering the extensive record evidence before it regarding Reeves' counsel's performance or giving any explanation as to why that evidence did not prove that his counsel's actions were unreasonable, the Court of Criminal Appeals held that Reeves' failure to call his attorneys to testify was fatal to his claims of ineffective assistance of counsel. The Alabama Supreme Court denied review.

There can be no dispute that the imposition of a categorical rule that counsel must testify in order for a petitioner to succeed on a federal constitutional ineffective-assistance-of-counsel claim contravenes our decisions requiring an objective inquiry into the adequacy and reasonableness of counsel's performance based on the full record before the court. Even Alabama does not defend such a rule. Instead, the dispute here is whether the Alabama Court of Criminal Appeals in fact imposed such a rule in this case. I believe it plainly did so. For that reason, I respectfully dissent from the denial of certiorari.

I

At his capital trial, Reeves was initially appointed two attorneys, Blanchard McLeod, Jr., and Marvin Wiggins, to represent him. Before trial, McLeod and Wiggins filed a motion requesting that the court appoint Dr. John R. Goff, a clinical neuropsychologist, as an expert "to evaluate, test, and interview" Reeves and require the State to provide them with the necessary funds to hire Dr. Goff. 1 Record in No. 98–77 (Ala. Crim. App.), pp. 64–65 (Direct

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Appeal Record). The trial court denied the motion, *id.,* at 67, and McLeod and Wiggins requested rehearing. In the rehearing request, the attorneys explained that they "possesse[d] hundreds of pages of psychological, psychometric and behavioral analysis material" and "[t]hat a clinical neuropsychologist or a person of like standing and expertise [was] the only avenue open to the defense to compile [and] correlate this information, interview [Reeves,] and present this information in an orderly and informative fashion to the jury during the mitigation phase of the trial." *Id.,* at 68–69.

During a hearing on the request, McLeod represented that hiring Dr. Goff was critical to the attorneys' preparation for the mitigation phase of Reeves' trial. He urged the importance of retaining Dr. Goff right away, as Dr. Goff would require time to review the existing records, interview people familiar with Reeves, and meet with Reeves several times prior to testifying. 3 Direct Appeal Record, Tr. in No. CC–97–31 (C. C. Dallas Cty., Ala.), pp. 9–10. As support for that point, McLeod recounted that, in a recent capital case in which another trial court had granted an "identical" motion to appoint Dr. Goff, the counsel there had filed "at a very late date" such that Dr. Goff "did not have the time to adequately prepare" for that defendant's hearing, and the death penalty was imposed. *Id.,* at 10. The trial court reconsidered and granted the funding and appointment requests. 1 *id.,* at 75.

Shortly thereafter, McLeod withdrew as counsel and was replaced by Thomas Goggans. Wiggins, however, remained as counsel on the case, and he and Goggans represented Reeves at trial.

Despite having received funding and an appointment order from the court, Reeves' trial counsel never contacted Dr. Goff, nor did they hire any other expert to evaluate Reeves for intellectual disability, notwithstanding the "hundreds of pages" of materials they possessed. 13 Rec-

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ord in No. CC–97–31.60 (Rule 32 Record), pp. 66–67; 4 *id.,* at 697; 5 *id.,* at 862.

After the guilt phase of the trial concluded, the jury convicted Reeves of capital murder. During the penalty phase, Reeves' trial counsel called three mitigation witnesses. First, they called Detective Pat Grindle, the officer in charge of investigating the murder, who gave a physical description of Reeves' childhood home based on his search of the house during the investigation. 8 Direct Appeal Record, Tr. 1118–1122; ___ So. 3d ___, 2016 WL 3247447, *3 (Ala. Crim. App., June 10, 2016). Next, petitioner's mother testified about Reeves' childhood, including that he had repeated two grades, was put in "special classes," received mental health services starting in second or third grade, and was expelled in eighth grade. 8 Direct Appeal Record, Tr. 1127. She also testified that, when he was young, Reeves had "little blackout spells" and would report "seeing things," and that he was shot in the head a few months before the murder for which he was convicted. *Id.,* at 1127, 1131, 1137, 1120–1150. Finally, Reeves' counsel called Dr. Kathleen Ronan, a court-appointed clinical psychologist, with whom counsel met and spoke for the first time shortly before she took the witness stand. 4 Rule 32 Record 609. Dr. Ronan had evaluated Reeves for the purposes of assessing his competency to stand trial and his mental state at the time of the offense, but had not conducted a penalty-phase evaluation or evaluated Reeves for intellectual disability. *Ibid.* Dr. Ronan testified that she had given Reeves only the verbal part of an intelligence test, noting that this was the "portion [of the test that] taps into the issues that were being asked by the Court," and had concluded based on that partial assessment that he was at "the borderline of mental retardation." 8 Direct Appeal Record, Tr. 1165.

The jury deliberated for less than an hour. 8 Direct Appeal Record 1227. By a vote of 10 to 2, they recom-

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mended that Reeves be sentenced to death.[2] 2 *id.,* at 233. The trial judge then considered the aggravating and mitigating circumstances and found two mitigating factors: Reeves' age and lack of significant prior criminal history. *Id.,* at 236. He expressly refused to find that Reeves' "capacity . . . to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired." Ala. Code §13A–5–51(6) (2015); 2 Direct Appeal Record 237. The trial judge found that the aggravating circumstances outweighed the two mitigating ones and sentenced Reeves to death. *Id.,* at 239.

After his conviction and sentence were affirmed on direct appeal, during which Goggans continued to represent him, Reeves, with the assistance of new counsel, sought postconviction relief in state court pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. He alleged, *inter alia*, ineffective assistance of both his trial and appellate counsel. Among his claims were that his trial counsel were ineffective for failing to hire Dr. Goff or another neuropsychologist to evaluate him for intellectual disability, failing to present expert testimony of intellectual disability during the penalty phase to establish a mitigating circumstance, and failing to conduct an adequate mitigation investigation.

The Alabama Circuit Court held a 2-day hearing on Reeves' Rule 32 petition. Reeves did not call McLeod, Wiggins, or Goggans to testify.[3] He did, however, call Dr. Goff, who had evaluated Reeves for purposes of his post-

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[2] Had only one more juror voted against imposing the death penalty, the jury could not have recommended death. Ala. Code §13A–5–46(f) (2015).

[3] Reeves implies in his petition for writ of certiorari that one reason he did not call Wiggins to testify was that Wiggins had become a state-court judge by the time the Rule 32 proceedings had started and thus would have had to testify before one of his judicial colleagues about whether his prior professional conduct had been deficient.

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