

04-5462 ROMPILLA V. BEARD

DECISION BELOW: 355 F3d 233

LOWER COURT CASE NUMBER: 00-9005, 00-9006

QUESTION PRESENTED:

Questions related to the *Simmons v. South Carolina*, 512 U.S. 154 (1994), issue:

1. Does *Simmons* require a life-without-parole instruction where: the only alternative to a death sentence under state law is life without possibility of parole; the jury asks the court three questions about parole and rehabilitation during eleven hours of penalty-phase deliberations; the prosecution's evidence is that the defendant is a violent recidivist who functions poorly outside prison and who killed someone three months after being paroled from a lengthy prison term; and the prosecutor argues that the defendant is a frightening repeat offender and cold-blooded killer who learned from prior convictions that he should kill anyone who might identify him?
2. Is the state court decision denying the *Simmons* claim "contrary to" and/or an "unreasonable application" of clearly established Supreme Court law where the state court held that a history of violent convictions is irrelevant to the jury's assessment of future dangerousness, while ignoring the jury's questions about parole-eligibility and rehabilitation and the prosecution's actual evidence and argument? Questions related to counsel's ineffective assistance at capital sentencing:
3. Has a defendant received effective representation at capital sentencing where counsel does not review prior conviction records counsel knows the prosecution will use in aggravation, and where those records would have provided mitigating evidence regarding the defendant's traumatic childhood and mental health impairments?
4. Has a defendant received effective representation at capital sentencing where counsel's background mitigation investigation is limited to conversations with a few family members; where the few people with whom counsel spoke indicated to counsel that they did not know much about the defendant and could not help with background mitigation; where other sources of background information, including other family members, prior conviction records, prison records, juvenile court records and school records, were available but ignored by counsel; and where the records and other family members would have provided compelling mitigating evidence about the defendant's traumatic childhood, mental retardation and psychological disturbances?
5. Does counsel's ineffectiveness warrant habeas relief under AEDPA where the state court sought to excuse counsel's failure to obtain any records about the defendant's history by saying the records contained some information that was "not entirely helpful," by saying counsel hired mental health experts (even though those experts did not do any background investigation and never saw the records), and by saying counsel spoke to some family members (even though those family members told counsel they knew little about the defendant and could not help with mitigation); and where the state court did not even try to address counsel's failure to interview other family members (who knew the defendant's mitigating history) or counsel's complete failure to investigate the aggravation that the prosecution told counsel it would use?

CERT. GRANTED 9/28/2004