16-6795 AYESTAS V. DAVIS

DECISION BELOW: 817 F.3d 888

LOWER COURT CASE NUMBER: 15-70015

QUESTION PRESENTED:

While Carlos Ayestas' federal habeas proceeding was pending, the Harris County District Attorney's Office ("HCDA") accidentally disclosed a document memorializing the basis of its charging decision. The author of that HCDA charging memo had provided as one of two typewritten reasons for seeking the death penalty: "THE DEFENDANT IS NOT A CITIZEN." The lower federal courts have denied the routine stay-and-amendment procedure necessary to exhaust the claims associated with the HCDA memo in state court.

The lower courts have also denied Mr. Ayestas' motion, under 18 U.S.C. § 3599, for "investigative, expert, [and] other services" that were "reasonably necessary'' to develop facts associated with a separate Sixth Amendment ineffective-assistance-of-counsel ("IAC") claim that had been forfeited by his state habeas lawyer. The Fifth Circuit interprets "reasonably necessary" to require an inmate to show "substantial need," an interpretation of§ 3599(£) that forms an express circuit split with other federal courts of appeal. Through the substantial-need standard, the Fifth Circuit withholds expert and investigative assistance unless inmates are able to carry the burden of proof on the underlying claim at the time they make the§ 3599(f) motion itself.

This case therefore presents the following questions:

1.Whether reasonable jurists could disagree that, by anticipatorily applying a procedural default not actually grounded in state law, a district court abused its discretion when it refused a routine stay and amendment necessary to exhaust claims associated with newly discovered evidence revealing overt discrimination in the prosecution's decision to seek the death penalty.

2.Whether the Fifth Circuit erred in holding that 18 U.S.C. § 3599(f) withholds "reasonably necessary" resources to investigate and develop an IAC claim that state habeas counsel forfeited, where the claimant's existing evidence does not meet the ultimate burden of proof at the time the § 3599(f) motion is made.

GRANTED LIMITED TO QUESTION 2 PRESENTED BY THE PETITION.

CERT. GRANTED 4/3/2017