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Summary of Wilson v. State, 127 Nev. Adv. Op. 68

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CRIMINAL LAW AND PROCEDURE – AGGRAVATING CIRCUMSTANCES

Summary

The Court considered an appeal from the district court’s dismissal of Petitioner’s third state petition for writ of habeas corpus in light of *McConnell v. State*.²

Disposition/Outcome

The Court concluded that *McConnell v. State* did not preclude the State from using the same predicate felony both as support for felony murder and as an aggravating circumstance for premeditated and deliberate first-degree murder. The Court affirmed the district court’s dismissal of the habeas petition.

Factual and Procedural History

In 1979, Petitioner Edward Thomas Wilson (“Wilson”) pled guilty to first-degree murder and felony murder after plotting and committing the murder and robbery of an undercover police officer during the course of a drug deal. Wilson also pled guilty to kidnapping and robbery with a deadly weapon. A three-judge sentencing panel found three aggravating circumstances: (1) the murder occurred during the commission of a robbery, (2) the murder occurred during the commission of a kidnapping, and (3) the murder was committed for pecuniary gain. The panel also found two mitigating circumstances: (1) Wilson had no significant history of prior criminal activity, and (2) he was twenty years old at the time of the murder. The panel sentenced Wilson to death after determining the aggravating circumstances outweighed the mitigating circumstances. The Supreme Court of Nevada subsequently affirmed the convictions and death sentence.

The Court thereafter affirmed the district court’s dismissal of Wilson’s first two state habeas petitions. The district court dismissed Wilson’s third petition as untimely and, therefore, procedurally barred. The district court concluded that Wilson failed to demonstrate good cause and prejudice, actual innocence, or a fundamental miscarriage of justice to justify avoiding the procedural bar. Wilson appealed.

Discussion

Justice Hardesty wrote for the unanimous Court, sitting en banc.³ The Court found that Wilson demonstrated good cause, but not prejudice, in raising his delayed challenge based on *McConnell v. State* (*McConnell I*). On successive petitions, the petitioner has the burden to show good cause for failing to present the claim previously, and must also demonstrate that the

¹ By Aaron K. Haar.

² *McConnell v. State* (*McConnell I*), 120 Nev. 1043, 102 P.3d 606 (2004).

³ Justice Pickering did not participate in this decision.

petitioner would be subject to actual prejudice if the court declined to hear the claim.⁴ The court must dismiss the claim if the petitioner cannot demonstrate both good cause and prejudice.⁵ Wilson based his challenge on *McConnell I*, which was decided in 2004.⁶ Wilson raised his challenge within a reasonable time after the case's disposition.⁷ Therefore, Wilson demonstrated good cause for the delay.

Wilson did not adequately demonstrate prejudice, however, because *McConnell I* did not invalidate the felony aggravating circumstances. In *McConnell I*, the Court held that the United States and Nevada Constitutions prohibit basing an aggravating circumstance on the felony underlying a felony murder conviction.⁸ The Court in *McConnell I* was concerned that a jury might rely on felony murder to find first-degree murder and then use the underlying felony as an aggravating circumstance in the penalty phase.⁹

The Court found that the concerns expressed in *McConnell I* were not present in the current case. Wilson pled guilty to premeditated and deliberate first-degree murder *in addition to* felony murder. His first-degree murder conviction was wholly independent of the kidnapping and robbery convictions. Therefore, the State was not precluded from using the kidnapping and robbery convictions as aggravating circumstances, and Wilson was not prejudiced by dismissal.

The Court further held that Wilson failed to establish his actual innocence. He also failed to demonstrate that a fundamental miscarriage of justice would result in dismissing his claim. Therefore, the Court affirmed the district court's order dismissing Wilson's third petition for writ of habeas corpus.

Conclusion

The State may use a felony aggravator where the defendant pled guilty to first-degree murder based on premeditation and deliberation *and* felony murder.

⁴ NEV. REV. STAT. § 34.810 (2007).

⁵ *Id.*

⁶ *McConnell I*, 120 Nev. 1043, 102 P.3d 606 (2004).

⁷ *See Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003).

⁸ *McConnell I*, 120 Nev. at 1069, 102 P.3d 606, 624.

⁹ *McConnell v. State (McConnell II)*, 121 Nev. 25, 30, 107, P.3d 1287, 1290-91 (2005).