

The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. This department includes an in-depth look at two cases plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.

***Martel v. Clair* (10-1265)**

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Nov. 17, 2010)

Oral argument: Dec. 6, 2011

In 1987, a jury convicted Kenneth Clair of murdering Linda Rodgers and sentenced him to death. In 1995, Clair filed a habeas corpus petition requesting new court-appointed counsel, but the district court rejected his request. On appeal, the Ninth Circuit reversed the district court's decision and remanded the case to allow Clair's new attorney to present additional claims. Clair argues that the district court abused its discretion by failing to investigate his request for substitute counsel properly, and maintains that Clair must be allowed to make new claims and present additional evidence in the interests of justice. The state argues that Clair should not be permitted another chance to argue his case because of mere dissatisfaction with his court-appointed counsel. The Supreme Court's decision will determine the standard courts will use in granting habeas petitioners' requests for substitute counsel as well as the finality of appellate denials of habeas petitions.

Background

Kenneth Clair was sentenced to death in 1987 for the murder of Linda Rodgers. The Supreme Court of California affirmed Clair's death sentence in 1992. Clair initially commenced federal habeas corpus proceedings in 1993, and the District Court for the Central District of California granted his request for counsel and stayed his execution. After exhausting his state remedies, Clair filed an amended habeas petition. The district court substituted the federal public defender (FPD) as Clair's court-appointed counsel. With

the FPD's assistance, Clair successfully moved for an evidentiary hearing and discovery. In March 2005, Clair stated that he no longer wanted the FPD as his court-appointed counsel, but the FPD later notified the court that the court-appointed attorney had spoken with Clair and would continue to represent him.

On June 16, 2005, Clair wrote another letter requesting appointment of new counsel, alleging that the FPD had been repeatedly inattentive to his case, filed disorganized briefs, decided not to publicize his case, and made no effort to analyze newly discovered physical evidence. On June 30, 2005, the district court denied Clair's renewed request for substitution of counsel on the ground that the FPD's representation of Clair did not present any conflicts of interest or inadequacy and denied Clair's habeas corpus petition on the merits. Subsequently, Clair filed an appeal seeking review of the denial of substitute counsel.

In October 2005, the FPD informed the Ninth Circuit that the attorney-client relationship with Clair had broken down, and the Ninth Circuit appointed substitute counsel in January 2006. The new counsel filed a motion for post-conviction relief, requesting that the court vacate the denial of habeas petition so that the new physical evidence could be analyzed. The district court denied the motion. The Ninth Circuit vacated and found that the district court had abused its discretion when it denied Clair's request for substitute counsel on June 30, 2005. The Ninth Circuit granted Clair's motion for new counsel retroactively and ordered the district court to treat Clair's new counsel as if the appointment had been made in 2005 and to consider all new submissions as if they had been before the 2005 denial of Clair's habeas

petition. The Supreme Court granted certiorari to determine whether a state death row inmate is entitled to replace court-appointed counsel in federal habeas corpus proceedings because of dissatisfaction with the attorney's failure to investigate new evidence.

Implications

Martel argues that Clair's motion for substitution of counsel abuses the writ of habeas corpus and undermines the purpose of the Antiterrorism and Effective Death Penalty Act (AEDPA), which aims to reinforce the federal policy against undue delay in executing sentences. Martel contends that death row inmates have an incentive to delay federal habeas corpus proceedings in order to delay the execution of the state court's judgment; therefore, allowing counsel substitution motions could permit defendants to continually request new counsel. According to Martel, defendants could present new claims if they are dissatisfied with the outcome of habeas proceedings and thereby impose an undue burden on states.

Clair argues that allowing defendants to file motions for substitution of counsel in habeas proceedings will not cause undue delay. He contends that a court has discretion to consider whether substitution of counsel would delay litigation when deciding a motion to substitute counsel. Clair contends that Rule 15 of the Federal Rules of Civil Procedure affords the district court discretion to either reopen the case or to deny the petition if a claim is meritless or a claim was filed in bad faith to cause undue delay in state proceedings. Clair believes that Rule 15 safeguards the state's interest for timely execution of its criminal judgment when a defendant moves to substitute counsel.

Martel argues that Clair's successive habeas petitions undermine principles of finality, comity, and federalism. Several states contend that federalism requires federal courts to defer to state court judgments in criminal proceedings, thereby giving states the opportunity to execute their criminal sentences

PREVIEWS *continued on page 56*

without undue interference from federal courts. The states further argue that the delay caused by allowing defendants to substitute counsel is costly for states, because states would have to relitigate the defendant's claim and consider new claims or evidence that were not presented at the defendant's trial.

Clair argues that his substitution motion does not pose a threat to these principles. He reasons that, when deciding a motion for substitution of counsel, a habeas court determines whether giving the defendant a new attorney is in the "interests of justice." Clair contends that this standard considers the interests of the state. Clair further claims that there is no evidence showing that the interest of justice standard causes any delaying tactics. Finally, Clair asserts that the principles of finality, comity, and federalism underlying the AEDPA do not apply in this case, because Clair filed his petition before the AEDPA became effective.

Legal Arguments

Congressional Intent

In the interests of finality, argues Martel, Clair's disapproval of his public defender's performance was an inadequate basis to allow for substitution of counsel. According to Martel, Congress intended appointments of post-conviction counsel to last. Martel contends that the AEDPA's rules for appointing qualified counsel demonstrate Congress's intent to reduce substitution of counsel in death row cases. Martel argues that because the Supreme Court had already ruled that habeas and post-conviction petitions were not constitutionally entitled to effective assistance of counsel, Congress did not need to state explicitly that ineffective counsel was not a proper basis to substitute counsel.

Clair contends, however, that the Ninth Circuit used the appropriate standard in overruling the district court by looking to the interests of justice, and that standard fits within the history and intent of 18 U.S.C. § 3599. Clair argues that Congress indicated that the right to appointed counsel was critical for ha-

beas defendants in capital cases by providing these defendants with a statutory right to counsel with special qualifications. Clair contends that, before § 3599 was enacted, all defendants—including those in capital cases—were allowed such substitutions, and Congress certainly did not intend to make it more difficult for capital defendants to seek qualified counsel.

Appropriate Substitution of Counsel

Martel reasons that courts should not allow substitution of counsel to delay proceedings or give convicted prisoners another chance to litigate their case by circumventing AEDPA limitations on subsequent litigation. Martel argues that courts should consider whether a defendant delayed in voicing concerns about counsel. Martel argues that a court should grant a motion for substitution of counsel only if the defendant shows that the counsel has insufficient qualifications, has a significant conflict of interest, or has abandoned the case. Because Clair did not allege any of these deficiencies, Martel asserts that the motion was insufficient to justify appointing new counsel. Martel observes that a habeas motion allows the prisoner even fewer constitutional rights to effective counsel than does an appeal.

Clair argues that substitution of counsel was appropriate, and the Ninth Circuit's remand order was a reasonable remedy. Because the district court abused its discretion by not investigating the alleged need for new counsel, Clair contends that it is reasonable to treat the substitute counsel as if the appointment had been made when Clair filed the habeas petition. Clair reasons that the Ninth Circuit tried to restore Clair to his position at the time he requested substitute counsel, when the district court could still entertain new claims. Moreover, Clair rejects Martel's three factors as the only bases for substitution of counsel, arguing that the text of § 3599 allows the court to replace "similarly qualified counsel" and therefore indicates that adequately qualified counsel may still be substituted.

The "Interests of Justice" Standard

Martel claims that, even if the § 3006A interests of justice standard used by the Ninth Circuit were appropriate, the court could still be more lenient than that standard allows. Martel contends that the district court did not prejudice Clair or deny him any substantial rights when it denied his motion for new counsel. In addition, Martel contends that the district court had cause for skepticism in reviewing Clair's complaints. For example, even though Clair repeatedly complained that his counsel had refused to publicize his case, he also acknowledged that his counsel reasonably feared that the court would look at such publicity unfavorably. In addition, Martel argues that the new evidence did not link Clair to the crime scene and did not undermine other evidence of his guilt.

Clair argues the appeals court reasonably determined that the district court had violated the interests of justice by making an uninformed decision to deny substitute counsel when the court did not have adequate information. Clair asserts the district court's failure even to ask Clair's disfavored counsel for a response concerning Clair's criticisms shows the inadequacy of the court's review. Clair also says that the courts should not be attempting to determine the substantive merits of his claims in the pursuit of justice, but rather should amend the habeas petition in order for the district court to investigate and draw informed conclusions. Clair contends that no court can determine how his substantive rights were affected or whether he was prejudiced when the district court failed to evaluate the new evidence.

Conclusion

Martel argues that a court should grant a capital defendant's motion for substitution of counsel only if the counsel fails to meet certain statutory qualifications or has a conflict of interest, or if the attorney abandoned the client. Clair counters that courts should decide substitution of counsel motions under an interests of justice standard and should therefore consider all relevant factors. The Supreme Court's de-

cision will determine the proper standard to be used when a court considers a habeas petitioner's request for new court-appointed counsel. **TFL**

Prepared by Amanda Hellenbal and Chuan Liu. Edited by Natanya DeWeese.

Williams v. Illinois (10-8505)

Appealed from the Supreme Court of Illinois (July 15, 2010)

Oral argument: Dec. 6, 2011

Sandy Williams was charged with the sexual assault of 22-year-old L.J. in 2000. At trial, the prosecution called an expert witness to testify about DNA test results that identified Williams as the assailant. Williams moved to strike the evidence under the Confrontation Clause of the Sixth Amendment, because the testifying witness had not performed the DNA tests. The court denied his motion and convicted Williams of sexual assault, kidnapping, and robbery. Williams contends that allowing an expert witness to testify when the witness did not prepare the forensic reports violates the Confrontation Clause. Williams insists that he must have the opportunity to cross-examine the analysts who prepared the reports, particularly because DNA test results are prone to error or manipulation. Illinois argues that allowing the expert witness to testify does not violate the Confrontation Clause, because the witness was applying her own independent analysis and opinions concerning the report.

Background

In February 2000, 22-year-old L.J. walked by an alley when Williams allegedly came up behind her, forced her into a car, and raped her. After describing the rape to police officers, L.J. and her mother went to the emergency room, where a doctor took samples for a criminal sexual assault evidence collection kit. The hospital sent the kit to the Illinois State Police (ISP) Crime Lab for testing.

The ISP performed tests on the contents of the sexual assault kit. Soon after those tests were done, police arrested Williams for an unrelated offense and took his blood sample. A forensic

scientist entered Williams' DNA profile into the crime lab's database. Meanwhile, the ISP sent L.J.'s sexual assault kit to the Cellmark Diagnostic Laboratory for a DNA profile of L.J.'s attacker. Sandra Lambatos, the ISP's forensic biologist, matched Williams' DNA profile to the DNA obtained from the attacker's blood sample found in L.J.'s sexual assault kit. L.J. identified Williams in a lineup, and police arrested Williams for aggravated criminal sexual assault, aggravated kidnapping, and aggravated robbery.

At Williams' trial, Lambatos testified as an expert witness in forensic biology and DNA analysis. Lambatos stated that it is common practice for one DNA expert to rely on another DNA analyst's records to complete the testing procedures. Lambatos testified that, even though Cellmark used different procedures than those used by the ISP, the police's crime lab frequently relied on Cellmark's DNA results. Lambatos stated that she believed L.J.'s attacker's DNA profile matched Williams' profile. The prosecution did not enter Cellmark's DNA profile of L.J.'s attacker into evidence, and Lambatos did not read the contents of the Cellmark report during her testimony.

Williams moved to strike Cellmark's DNA test results as a violation of his Sixth Amendment right to confront witnesses testifying against him. Williams also claimed that there was insufficient evidence that Cellmark's test results were reliable. The trial court denied the motion to strike the witness's testimony, and the court found Williams guilty of all charges. Illinois' Court of Appeal for the First District rejected the defendant's arguments and affirmed the trial court's ruling. The Supreme Court of Illinois upheld the appellate court's ruling, holding that Cellmark's lab report was not testimonial, and Williams' Sixth Amendment rights were not violated. The U.S. Supreme Court will consider whether allowing an expert witness to testify about DNA test results that the witness did not obtain herself violates the defendant's right to confront his accuser, as provided by the Sixth Amendment.

Implications

Williams contends that there are numerous instances of faulty DNA results and that defendants deserve the right to confront the forensic analysts who have produced the results. According to the Innocence Network, because a defendant may face conviction based on DNA evidence alone, it is important to allow that defendant to expose possible errors in testing that evidence. Groups of criminal defense lawyers also argue that DNA lab analysts should not be exempt from confrontation because the possibility for error in those labs still exists even if the results came from an accredited lab.

Illinois argues that there are adequate safeguards to protect against the misuse of expert testimony, including the defense's opportunity to cross-examine the expert witness and to call competing experts. Moreover, according to the Department of Justice, the value of an expert's testimony can be determined by the jury. Most states argue that juries need expert testimony to interpret the results of DNA tests and assert that questions about the reliability of expert testimony go to the weight of the evidence.

Williams argues that confrontation operates as a way to test both the honesty and competence of a forensic scientist. Williams asserts that, if the Supreme Court allows Lambatos' testimony, the Court would encourage the total abrogation of a defendant's right to confront witnesses. The California Public Defenders argue that, if the analyst who performed the tests is not required to testify, the prosecution's expert witnesses will be encouraged to testify to hearsay evidence, because of the difficulty defendants would face in getting the analyst who performed the tests to testify at trial.

Most states argue that courts have long accepted DNA tests as a type of expert testimony. The National District Attorneys Association (NDAA) notes that an expert who is testifying about DNA test results is still testifying to his or her own opinion of the facts in the report. The NDAA argues that laboratories test DNA in many steps that involve different analysts, and forensic

PREVIEWS *continued on page 58*

science work would be compromised by requiring all those analysts to spend time testifying at trial. The NDAA argues that ruling for Williams will restrict the use of forensic tests, seriously burdening prosecutors and the criminal justice system.

Legal Arguments

Williams argues that Lambatos' testimony regarding Cellmark's DNA report violated the Confrontation Clause, because Lambatos had no actual knowledge of how the report was prepared, and Williams could not cross-examine the analyst who prepared the report. Illinois contends that the Confrontation Clause was not violated, because the expert witness had offered her own independent testimony and was available for cross-examination. Moreover, Illinois argues that Cellmark's DNA report was not a testimonial statement that is subject to the Confrontation Clause.

Testimonial Statements

Williams contends that allowing the expert witness to testify about the DNA lab reports Cellmark had generated was a violation of the Confrontation Clause. Williams argues that forensic laboratory reports are testimonial and implicate the Confrontation Clause; therefore, testimony regarding the laboratory reports is subject to Sixth Amendment protection. Williams maintains that formal admission of a testimonial statement is not required for a violation of the Confrontation Clause to occur; introducing the testimonial statement through another person's testimony is enough to violate the Confrontation Clause. Williams insists that, because the prosecution is using the statement for the same purpose in the two scenarios, the opportunity to cross-examine the witness is crucial in both situations. Williams argues that Cellmark's DNA lab report was introduced through the expert witness's testimony and therefore triggers the protections afforded by the Confrontation Clause. Moreover, Williams argues that there was insufficient opportunity to cross-examine the expert witness, because that witness had presented the substantive information contained in the lab report but had not

prepared the report herself. Williams contends that the analysts who prepare laboratory reports should be subject to cross-examination.

Illinois argues that the Confrontation Clause is not implicated, because Cellmark's DNA report was not a testimonial statement. Illinois maintains that the Confrontation Clause must refer only to human witnesses, because a defendant cannot examine a witness who is not a human being. Because there was little human involvement in producing the DNA report, Illinois maintains that this was not a human assertion subject to the Confrontation Clause. Illinois points out that the DNA report was prepared to assist in forensic analysis, not for trial purposes, as further evidence that it is not testimonial in nature and therefore not subject to the protection available under the Confrontation Clause. However, Illinois maintains that, if these reports are testimonial statements, Williams had ample opportunity for cross-examination because Lambatos testified about her opinion of the DNA report prepared by Cellmark. Illinois argues that, although the expert witness does not have firsthand knowledge regarding the preparation of these documents, her opinions and the reasonableness of that knowledge are still subject to cross-examination.

Hearsay Evidence

Williams states that Cellmark's lab reports constitute hearsay—or evidence being offered to prove the truth of the matter asserted—and are subject to the Confrontation Clause. Williams insists that the forensic lab reports were being offered for their truth because, in order to determine the value of Lambatos' opinion, the jury necessarily had to consider the bases for her opinion. Williams maintains that, by considering the bases of the witness's opinion, the jury had to consider the truth of the forensic lab reports. Williams argues that, in order to judge the probative value of the witness's testimony, the jury had to consider the DNA report for its truth. Moreover, Williams asserts that, because Lambatos was unfamiliar with how the forensic report was prepared, her opinion of the results of the DNA

testing was completely dependent on Cellmark's analysts having accurately prepared the report. Williams maintains that the expert's testimony was being offered to establish the truth of the report.

Illinois argues that the expert merely relied on the data to form her own independent conclusion. Illinois maintains that the witness did not violate the Confrontation Clause, because her statements regarding the DNA analysis report were limited to her own analysis. Illinois emphasized the independence of the witness's opinion by pointing out that the witness had also addressed how her interpretations were different from the report. Illinois also argues that the witness also indicated that she had relied heavily on her own expertise in the field and not solely on the report. Moreover, Illinois points out that there was evidence that the judge considered the witness's testimony that referred to the report only when it was directly relevant to her opinion. Furthermore, Illinois insists that the judge did not rely on the report to determine guilt. Illinois also argues that most of the expert witness's statements referring to the report were the result of cross-examination. Illinois claims that, because references to the reports were made mostly during cross-examination, the statements do not implicate the Confrontation Clause.

Conclusion

Williams argues that allowing the expert witness to testify about forensic reports violates the Confrontation Clause, because the expert did not prepare the reports. Illinois maintains that allowing the expert witness to testify concerning the lab reports is not a violation of the Confrontation Clause, because Williams had been allowed ample opportunity to cross-examine the witness, and the witness had testified to her own independent opinions. The Supreme Court's decision in this case could affect the use of forensic tests in criminal prosecutions. **TFL**

Prepared by Jenny Liu and Lisa Schmidt. Edited by Natanya DeWeese. The authors would like to thank Frank