US Supreme Court denies federal appeal of Arizona death penalty cases on grounds of ineffective counsel

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The US Supreme Court ruled Monday that two death row inmates cannot raise evidence of ineffective counsel during a federal habeas appeal, since they failed to present it in state court. The 6-3 ruling, divided along ideological lines, effectively denies rights set forth in the Sixth Amendment to the US Constitution, including the right of the accused to counsel of choice, to appointed counsel and to the effective assistance of counsel.

Overturning rulings by lower federal courts, the Supreme Court decision severely restricts the ability of felons convicted in state court to appeal to the federal courts on the grounds of ineffective counsel and present exculpatory evidence not raised at the state level.

It effectively overturns the Supreme Court ruling in a 2012 case, *Martinez v. Ryan*, which said that a convicted defendant "is not at fault for any failure to bring a trial-ineffectiveness claim in state court."

That ruling opened the door to appeals like the one brought by Arizona death row inmate Barry Jones, who argued in federal court that his lawyers in state-level proceedings failed to present evidence clearing him of the charge of raping and murdering his girlfriend's four-year-old daughter.

In 2018, a federal court overturned Jones' conviction and wrote that had he had effective counsel "there is a reasonable probability that his jury would not have convicted him of any of the crimes with which he was charged and previously convicted." An appeal of that ruling by the state of Arizona was turned down by the 9th US Circuit Court of Appeals.

The other Arizona death row inmate in the Supreme Court case *Shinn v. Ramirez*, David Ramirez, claimed that his state-appointed lawyer made little effort to try to prove his intellectual disability. Ramirez was convicted of fatally stabbing his girlfriend, Mary Ann Gortarez, and her 15-year-old daughter Candie, in 1989. Ramirez claimed that his lawyers at the state level failed to present evidence of his horrific childhood that might have led to a sentence of life imprisonment instead of death. The US 9th Circuit Court of Appeals also sided with Ramirez.

The anti-democratic ruling in *Shinn v. Ramirez* follows the leaking of a Supreme Court draft opinion overturning the landmark abortion rights case *Roe v. Wade* and granting states the power to criminalize abortion.

Associate Justice Clarence Thomas, writing for the majority, said that a 1996 law that sought to limit criminal appeals did not allow a federal court to conduct hearings or consider evidence "beyond the state-court record based on ineffective assistance of state post-conviction counsel." He was joined by the court's other right-wing justices--Samuel Alito, Neil Gorsuch, Brett Kavanaugh, Amy Coney Barrett and Chief Justice John Roberts.

Thomas' majority opinion in *Shinn v. Ramirez* means that convicted defendants like Jones and Ramirez can be held responsible, kept in prison and executed even if their state-appointed attorney provided ineffective counsel on appeal.

Writing for the minority, Justice Sonia Sotomayor, joined by Justices Stephen Breyer and Elena Kagan, described Thomas's opinion as "perverse" and "illogical." Sotomayor wrote that it "reduced to rubble" previous Supreme Court rulings that found the right to effective counsel to be a "bedrock principle" of the US criminal justice system.

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In siding with Arizona, Justice Thomas argued that the "Antiterrorism and Effective Death Penalty Act" of 1996 imposed strict limits on federal courts in such cases. The act, passed by Congress with broad bipartisan support and signed into law by President Bill Clinton, severely limits the power of federal courts to grant habeas corpus relief to state prisoners. Most notably, it imposes strict limits on death penalty appeals to the federal courts.

In his ruling, Thomas is saying that the accused must rely solely on the record of a trial in which he or she was ineffectively defended. He writes: "[A] federal order to retry or release a state prisoner overrides the State's sovereign power to enforce 'societal norms through criminal law,'" inflicting "a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike."

He writes further: "[T]he attorney is the petitioner's agent when acting, or failing to act, in furtherance of the litigation, and the petitioner must bear the risk of attorney error."

Stated plainly, the constitutional right of the accused to effective counsel must be subordinated to the right of the state to incarcerate or even put him or her to death, irrespective of the accused's guilt or innocence.

Justice Sotomayor wrote in the dissenting opinion: "Ineffective-assistance claims frequently turn on errors of omission: evidence that was not obtained, witnesses that were not contacted, experts who were not retained, or investigative leads that were not pursued."

She added, "To put it bluntly: Two men whose trial attorneys did not provide even the bare minimum level of representation required by the Constitution may be executed because forces outside of their control prevented them from vindicating their constitutional right to counsel."

Frank Atwood, who was not party to the Supreme Court case, is scheduled to be executed by the state of Arizona on June 8. He was sentenced to death for the 1987 murder of eight-year-old Vicki Lynne Hoskinson. Because Atwood's crimes occurred before Arizona outlawed the gas chamber in 1992, he had the choice between death by lethal gas or lethal injection.

Atwood chose the gas chamber, but with nitrogen gas, as opposed to the cyanide specified by Arizona Department of Corrections protocol. Cyanide was the gas used under the Nazis to murder millions of Jews and opponents of the regime. Because Arizona specifies that cyanide be used, the method defaults to lethal injection for Atwood.

Atwood's attorneys say their client is in a wheelchair and suffers from a spinal condition that would cause him "the maximum level of pain the human brain can process" if he is strapped to a gurney for lethal injection, pointing to the extended period of time it takes Arizona execution teams to insert IVs into condemned prisoners.

Clarence Dixon, executed in Arizona on May 11, was the first person to be executed by lethal injuection since the ghastly, two-hour execution of Joseph Wood in 2014. Executioners spent 40 minutes trying to insert IVs into Dixon's arms before finally resorting to cutting into his groin to administer the drugs through his femoral vein. A media witness reported that Dixon gasped after the toxic chemicals were administered, losing consciousness shortly thereafter.

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