

1986

State of Utah v. Douglas Carter: Legal Brief

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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Salt Lake City, Utah 84124

September 15, 1988

DOCKET NO. 860063

Mr. Geoffrey J. Butler
Clerk of the Utah Supreme Court
332 State Capitol
Salt Lake City, Utah 84114

Re: State v. Carter, Case No. 860063

Dear Mr. Butler:

Pursuant to R. Utah S.Ct. 24 (j), I wish to cite three recent cases which I have learned about after oral argument of the Carter case. All three cases are relevant to the contention of amicus curiae at pages 13-19 and 24-27 of our brief and in oral argument, that as to the penalty imposed, errors at trial were prejudicial not harmless.

In Maynard v. Cartwright, __U.S.__, 108 S.Ct. 1853, 100 L. Ed.2d 372, decided June 6, 1988, the Court held that an Oklahoma aggravating circumstance, that the killing was "especially heinous, atrocious, or cruel", was unconstitutionally vague under the Eighth Amendment and that the state appellate court did not cure the constitutional infirmity by determining that the facts of the particular case made the killing especially heinous, atrocious, or cruel. The decision affirmed Cartwright v. Maynard, 822 F.2d 1477 (10th Cir. 1987), cited at page 20 of the amicus brief. (Certiorari was not granted by the Supreme Court on that part of the ruling in Cartwright for which the case is cited in the amicus brief.)

In Mills v. Maryland, __U.S.__, 108 S.Ct. 1860, 100 L. Ed.2d 384, decided June 6, 1988, the Court ruled that a death penalty was invalid where the instructions to the jury in the sentencing phase were susceptible to two interpretations, one of which was unconstitutional. The Court said:

"With respect to findings of guilt on criminal charges, the Court consistently has followed the rule that the jury's verdict must be set aside if it could be supported on one ground but not on another, and the reviewing court was uncertain which of the two grounds was relied upon by the jury in reaching the verdict. . . . In reviewing death sentences, the Court has demanded even greater certainty that the jury's conclusions rested on proper grounds." 100 L. Ed.2d at 395.

In Satterwhite v. Texas, __U.S.__, 108 S.Ct. 1792, 100 L. Ed.2d 284, decided May 31, 1988, the Court ruled that the

introduction of psychiatric testimony at the penalty phase which was based upon an examination conducted in violation of petitioner's Sixth Amendment right to counsel was not harmless error. The Court ruled that the applicable standard was that adopted in Chapman v. California, 364 U.S. 18, "whether the State has proved beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained", quoted at 100 L. Ed.2d 295.

Respectfully submitted,


Lionel H. Frankel
Counsel for the Amicus curiae

cc:David L. Wilkinson, Attorney General
David B. Thompson, Assistant Attorney General
Thomas Means