

Tennard Vs. Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division

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Court : US Supreme Court

Decided On : Jun-24-2004

Appeal No. : 02-10038

Appellant : Tennard

Respondent : Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division

Judgement :

TENNARD v. DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION - 02-10038 (2004)

TENNARD v. DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 02-10038. Argued March 22, 2004--Decided June 24, 2004

During his capital murder trial's penalty phase, petitioner Tennard presented evidence that he had an IQ of 67. The jury was instructed to determine the appropriate punishment by considering two "special issues," which inquired into whether the crime was committed deliberately and whether the defendant posed a risk of future dangerousness. These were materially identical to two special issues found insufficient, in *Penry v. Lynaugh*, [492 U. S. 302](#) , for the jury to give effect to Penry's mitigating mental retardation and childhood abuse evidence. Tennard's jury answered both special issues affirmatively and Tennard was sentenced to death. The Federal District Court denied Tennard's federal habeas petition in which he claimed that his death sentence violated the Eighth Amendment as interpreted in *Penry*, and denied a certificate of appealability (COA). The Fifth Circuit agreed that Tennard was not entitled to a COA. It applied a threshold test to Tennard's mitigating evidence, asking whether it met the Fifth Circuit's standard of "constitutional relevance" in *Penry* cases--that is, whether it was evidence of a "uniquely severe permanent handicap" that bore a "nexus" to the crime. The court concluded that (1) low IQ evidence alone does not constitute a uniquely severe condition, and no evidence tied Tennard's IQ to retardation, and (2) even if his low IQ amounted to mental retardation evidence, Tennard did not show that his crime was attributable to it. After this Court vacated the judgment and remanded for further consideration in light of *Atkins v. Virginia*, [536 U. S. 304](#) , the Fifth Circuit reinstated its prior opinion.

Held: Because "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Slack v. McDaniel*, [529 U. S. 473, 484](#) , a COA should have issued. Pp. 7-15.