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Supreme Court of Florida

FRIDAY, FEBRUARY 3, 2017

CASE NO.: SC15-2309
Lower Tribunal No(s).:
371984CF002324A00100

JOE ELTON NIXON vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Joe Elton Nixon, a prisoner under sentence of death for the 1984 murder of Jeanne Bickner, appeals the trial court's denial of his third motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.851. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. Relief was denied in both of Nixon's previous postconviction proceedings. See Nixon v. Singletary, 758 So. 2d 618 (Fla. 2000); Nixon v. State, 857 So. 2d 172 (Fla. 2003). In his current postconviction appeal, Nixon asserts that the trial court erred in (1) summarily denying Nixon an evidentiary hearing on his intellectual disability claim; (2) dismissing Nixon's motion on the basis that he is not currently intellectually disabled; and (3) rejecting Nixon's intellectual disability claim based upon Nixon's argument as to his total intellectual functioning.

Nixon's first claim is based on his motion being summarily denied in the trial court pursuant to a rule of law that has now been found unconstitutional under Hall v. Florida, 134 S. Ct. 1986 (2014). During the pendency of this case, this Court determined that Hall applies retroactively as a development of fundamental significance. Walls v. State, 41 Fla. L. Weekly S466, S469 (Fla. Oct. 20, 2016).

A postconviction court's decision on whether to grant an evidentiary hearing on a claim is a pure question of law, reviewed de novo. Mann v. State, 112 So. 3d 1158, 1162 (Fla. 2013). A claim may be summarily denied if it is legally insufficient or positively refuted by the record. Id. at 1161. To prevail on a claim of intellectual disability, a defendant must establish three elements: (1) significantly subaverage intellectual functioning (2) existing concurrently with

deficits in adaptive behavior and (3) manifesting prior to age 18. Fla. R. Crim. P. 3.203; see also § 921.137(1), Fla. Stat. (2015).

Hall recognizes that intellectual disability "is a condition, not a number." Hall, 134 S. Ct. at 2001. In a recent opinion, this Court found that Hall requires courts to consider all three prongs of intellectual disability in tandem and that no single factor should be dispositive of the outcome. See Oats v. State, 181 So. 3d 457, 459 (Fla. 2015). Thus, an intellectual disability claim may not be legally insufficient or positively refuted by the record even if the defendant's IQ scores are higher than 70.

At the Huff[1] hearing, Nixon presented his full range of scores,[2] which included a 73 from 1985 and a 72 and 68 from 1993. The trial court incorrectly found the significantly subaverage intellectual functioning prong dispositive of Nixon's intellectual disability claim based on Nixon's current score of 80. Although the court did not have the benefit of the Oats decision, it should have conducted the more holistic, interrelated assessment for which Nixon's counsel argued at the Huff hearing. Furthermore, because of its ruling as to the subaverage intellectual functioning prong, the court here did not look to all of the record evidence of Nixon's intellectual disability, even disregarding other non-IQ evidence that could have been relevant.

Therefore, Nixon's claim is legally sufficient and not conclusively refuted by the record in this case. As we noted in Walls, "all three prongs of the intellectual disability test [must] be considered in tandem…. [T]he conjunctive and interrelated nature of the test requires no single factor to be considered dispositive." Walls, 41 Fla. L. Weekly at S469 (citing Oats, 181 So. 3d at 459). Because the postconviction court here used the wrong legal standard, under Oats, to address Nixon's claim, Nixon's motion cannot be deemed legally insufficient or

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1. Huff v. State, 622 So. 2d 982 (Fla. 1993).

2. The record demonstrates six IQ scores for Nixon: a score of 88 in 1974 at 13 years of age, 88 in 1980 at 19 years of age, 73 in 1985 at 24 years of age, 72 and 68 in 1993 at 32 years of age, and 80 in 2006 at 45 years of age.

positively refuted by the record on that basis and therefore should not have been summarily denied. We remand on this issue alone, and instruct the trial court to conduct proceedings to determine whether a new evidentiary hearing is necessary.

It is so ordered.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

LABARGA, C.J., and PARIENTE, LEWIS, and QUINCE, JJ., concur.
CANADY and POLSTON, JJ., dissent.
LAWSON, J., did not participate.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

cd
Served:

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HON. JONATHAN ERIC SJOSTROM, CHIEF JUDGE