

Damien Wayne ECHOLS v. STATE of Arkansas

CR 94-928

902 S.W.2d 781

Supreme Court of Arkansas
Opinion delivered July 17, 1995

1. CRIMINAL PROCEDURE — DEATH PENALTY — MOTION TO LIMIT APPEAL — REMANDED FOR FINDINGS BY TRIAL COURT. — Where appellant had been found guilty of capital murder and sentenced to death, and where he had filed a *pro se* motion waiving all points for appeal concerning the death sentence and seeking to limit his appeal to those issues concerning the judgment of conviction, the supreme court remanded the matter for findings by the trial court on whether appellant had been advised by counsel with respect to abandoning issues already raised and whether appellant would submit himself to a judicial review in the trial court to consider whether he fully appreciated his position and could make a rational choice with respect to pursuing or abandoning issues on appeal concerning the death sentence.
2. CRIMINAL PROCEDURE — DEATH PENALTY — WHEN ABANDONMENT OF APPEAL OF DEATH SENTENCE PERMITTED. — An appellant sentenced to death will be permitted to abandon a state appeal of a death sentence only if he has been judicially determined to have the capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation of the death sentence; that is, he must be determined to have the capacity to understand the choice of life or death and to knowingly and intelligently waive any and all rights to appeal the death sentence.
3. CRIMINAL PROCEDURE — DEATH PENALTY — MANDATORY REVIEW OF COMPETENCY HEARING — STANDARD OF REVIEW. — If a competency hearing is held and a knowing and intelligent waiver of death-sentence issues is found, the record of the hearing and the trial court's findings shall be returned to the supreme court, which will review the proceeding to determine whether appellant had the capacity to understand the choice between life and death and to knowingly and intelligently waive his rights to challenge the death sentence on appeal; the standard of review is whether the trial court's conclusion is clearly erroneous.

Pro Se Motion to Limit Appeal (Craighead Circuit Court, Western District); *David Burnett*, Judge; remanded.

Appellant, pro se.

Winston Bryant, Att'y Gen., by: *David R. Raupp*, Asst. Att'y Gen., and *Vada Berger*, Asst. Att'y Gen., for appellee.

PER CURIAM. In 1994 Damien Wayne Echols was found guilty by a jury of capital murder and sentenced to death. The record has been lodged in this court on appeal. Counsel for appellant Echols filed the appellant's brief on June 19, 1995. On June 27, 1995, appellant filed a *pro se* motion in which he states that he waives all points for appeal which concern the sentence of death. He desires to limit the appeal to those issues which concern the judgment of conviction. Appellant's *pro se* motion is now before us.

[1] We remand the matter for findings by the trial court on the questions of whether appellant Echols has been advised by counsel with respect to abandoning issues already raised and whether appellant will submit himself to a judicial review to be held in the trial court to consider whether he fully appreciates his position and can make a rational choice with respect to pursuing or abandoning issues on appeal concerning the sentence of death.

[2] If the trial court determines that appellant has reached his decision with benefit of counsel and will submit himself to a judicial review of his capacity to abandon the death penalty issues raised on appeal, the trial court is directed to hold a competency hearing. An appellant sentenced to death will be permitted to abandon a state appeal of a death sentence only if he has been judicially determined to have the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation of the death sentence; that is, he must be determined to have the capacity to understand the choice of life or death and to knowingly and intelligently waive any and all rights to appeal the death sentence. *See Franz v. State*, 296 Ark. 181, 754 S.W.2d 839 (1988).

[3] If a competency hearing is held and the lower court determines appellant to have made a knowing and intelligent waiver of the issues pertaining to the death sentence, the record of the hearing and the court's findings shall be returned to this court for review. We will review the proceeding to determine whether appellant Echols had the capacity to understand the choice between life and death and to knowingly and intelligently

waive his rights to challenge the sentence of death on appeal. *See Franz v. State, supra*. The standard of review is whether the trial court's conclusion is clearly erroneous. *See Franz, supra*, citing *Rector v. State*, 277 Ark. 17, 638 S.W.2d 672 (1982).

Remanded.
