IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

October 20, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

FOR PUBLICATION

JAMES DAVID CARTER,	)	**Filed:** October 20, 1997
	)	
Appellant,	)	Hon. James E. Beckner
	)	Judge
Vs.	)	
	)	GREENE COUNTY
STATE OF TENNESSEE,	)	
	)	Supreme Court
Appellee.	)	No. 03-S01-9612-CR-00119
	)	

APPELLANT
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O P I N I O N

TRIAL COURT AND
COURT OF CRIMINAL APPEALS
AFFIRMED AS MODIFIED.

DROWOTA, J.

We granted the petitioner, James David Carter, permission to appeal to consider whether the lower courts erred by dismissing Carter's petition for post-conviction relief upon the grounds that his claims alleging violations of State v. Middlebrooks 840 S.W.2d 317 (Tenn. 1992) (Drowota, J. and O'Brien, J., dissenting), and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), have been previously determined by the federal district court, and that his claim challenging the constitutionality of the reasonable doubt instruction given at his trial, is without merit.

We agree with the lower courts that the reasonable doubt jury instruction given at Carter's trial did not violate Cage v. Louisiana, 489 U.S. 39, 111 S.Ct. 328, 112 L.Ed.2d 339 (1990) and its progeny and that the Brady claim was previously determined by the federal district court. Moreover, even though Carter's Middlebrooks claim was not previously determined since the federal district court was not a "court of competent jurisdiction" to resolve the state law issue, we hold that in the context of this case, Middlebrooks does not preclude reliance upon the felony murder aggravating circumstance as a basis for imposition of the death penalty. Accordingly, the judgment of the Court of Criminal Appeals upholding the trial court's dismissal of Carter's petition is affirmed as modified.

BACKGROUND

The petitioner, James David Carter, was tried on a one count indictment charging both premeditated and felony first degree murder. The jury returned a

general verdict of first degree murder and sentenced Carter to death by electrocution upon finding that there were two statutory aggravating circumstances,[1] and no mitigating circumstances sufficiently substantial to call for leniency.[2] On direct appeal, the conviction and sentence were affirmed by this Court. State v. Carter, 714 S.W.2d 241 (Tenn. 1986), cert. denied 479 U.S. 1046, 107 S.Ct. 910, 93 L.Ed.2d 860 (1987). Carter then filed his first post-conviction petition, which was unsuccessful. James David Carter, No. 304 Greene County, (Tenn. Crim. App., Knoxville, filed Sept. 14, 1989). Following a second unsuccessful petition for post-conviction relief, Carter v. State, 802 S.W.2d 223 (Tenn. Crim. App. 1990), perm. app. denied (Tenn. 1991), this Court granted the State's motion to set an execution date and designated April 3, 1991.

Thereafter, on March 13, 1991, Carter filed his original petition seeking a writ of habeas corpus in the federal district court of middle Tennessee. That court issued a stay of execution, appointed counsel, and subsequently transferred the case to the federal district court in east Tennessee. After the transfer, the petition for habeas corpus was amended. In the federal action Carter claimed that when a defendant has been convicted of felony murder, the use of the felony murder aggravating circumstance to support the sentence of death is unconstitutional.

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[1]The murder was committed for the purpose of avoiding, interfering with or preventing a lawful arrest or prosecution of the defendant and was committed while the defendant was engaged in committing larceny and kidnaping. Tenn. Code Ann. § 39-2-203(i) (6) & (7) (1982 Repl.) (repealed), now codified at Tenn. Code Ann. § 39-13-204(I)(6) & (7) (1991 Repl. & 1996 Supp.).

[2]The 1982 statute required only a showing that there were no mitigating circumstances sufficiently substantial to outweigh the aggravating circumstances. Tenn. Code Ann. § 39-2-203(g)(2) (1982 Repl.) The statute now requires that aggravating circumstances outweigh mitigating circumstances beyond a reasonable doubt. Tenn. Code Ann. § 39-13-204(f) & (g) (1991 Repl).

When the habeas corpus petition was filed in 1991, Middlebrooks had not been rendered. In that case, a majority of this Court specifically held that "when the defendant is convicted of first degree murder solely on the basis of felony murder," use of the felony murder aggravating circumstance is not permissible because it "does not narrow the class of death-eligible murderers sufficiently under the Eighth Amendment to the U.S. Constitution, and Article I, § 16 of the Tennessee Constitution because it duplicates the elements of the offense." Id., 840 S.W.2d at 346. The decision in Middlebrooks was considered to be based on federal constitutional law[3] until this Court's subsequent decision in State v. Howell, 868 S.W.2d 238, 259, n. 7 (Tenn. 1993), clarified that the Middlebrooks holding was independently based on Article 1, § 16 of the Tennessee Constitution.

Despite the independent state constitutional basis for the decision in Middlebrooks, the federal district court considered the claim in the habeas corpus action while ruling on the State's motion for summary judgment. By orders entered in November and December of 1994, the district court concluded that since the jury returned a general verdict of first degree murder, Middlebrooks does not apply to Carter's case because he was not convicted "solely on the basis of felony murder." The federal district court also granted the State's motion for summary judgment on Carter's alleged Brady violations.

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[3]Certiorari was granted in Tennessee v. Middlebrooks, 507 U.S. 1028, 113 S.Ct. 1840, 123 L.Ed.2d 466 (1993), and a motion to dismiss on the basis that adequate and independent state grounds supported this Court's decision was denied. Tennessee v. Middlebrooks, 510 U.S. 805,114 S.Ct. 48, 126 L.Ed.2d 19 (1993). The case was argued and subsequently, before the United States Supreme Court had rendered its decision, this Court's opinion in Howell was released. Thereafter, certiorari was dismissed as improvidently granted. Tennessee v. Middlebrooks, 510 U.S. 124, 114 S.Ct. 651, 126 L.Ed.2d 555 (1993).

Following this disposition in federal court, Carter filed his third petition for post-conviction relief in state court on January 30, 1995. As grounds for relief, Carter alleged that the trial court instructions on reasonable doubt at his trial violated Cage v. Louisiana, 498 U.S. 39, 111 S.Ct. 328, 112 L.Ed.2d 339 (1990), that the State failed to disclose exculpatory evidence in violation of Brady and that his sentence of death violated Middlebrooks. The trial court dismissed Carter's post-conviction petition, finding that the asserted violations of Middlebrooks and Brady had been previously determined by the federal district court and that the alleged error in the reasonable doubt jury instructions was without merit. The Court of Criminal Appeals affirmed the trial court's dismissal, and also found, as did the federal district court, that Middlebrooks does not apply unless the defendant is convicted of first degree murder "solely on the basis of felony murder." Id., 840 S.W.2d at 346. Thereafter, we granted Carter's application for permission to appeal and now affirm the decision of the Court of Criminal Appeals.

PREVIOUSLY DETERMINED

A. Court of Competent Jurisdiction - Middlebrooks

The statutory provision relevant to the defense of previous determination provides that "[a] ground for relief is 'previously determined' if a court of competent jurisdiction has ruled on the merits after a full and fair hearing."[4] In this Court,

[4]Tenn. Code Ann. § 40-30-112(a) (1990 & Supp. 1994)(Repealed). By a law effective May 10, 1995, the Post-Conviction Procedure Act was completely rewritten. 1995 Public Chapter 207, § 1. The petition for post-conviction relief which is the subject of this appeal was dismissed on April 12, 1995, prior to the effective date of the law as amended. However, the new law also provides that "[a] ground for relief is previously determined if a court of competent jurisdiction has ruled on the merits after a full and fair hearing." Tenn. Code Ann. § 40-30-206(h) (1996 Supp.). Therefore,

Carter argues that the jurisdiction of federal district courts in habeas corpus proceedings does not extend to questions of state law. Since the federal district court was not a "court of competent jurisdiction," to consider his Middlebrooks claim, Carter argues that the trial court and the Court of Criminal Appeals erred by concluding that the claim was previously determined. The State responds that the federal district court necessarily and appropriately considered the state constitutional issue when it decided the federal constitutional question. In addition, the State says that Carter chose to assert his Middlebrooks claim in the federal forum and should be bound by that court's decision on the claim.

It is well-settled that federal courts have the power under Article III of the United States Constitution to exercise pendent jurisdiction over state law claims. United Mine Workers of America v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966). However, Gibbs delineated only the constitutional boundaries of federal judicial power. The jurisdiction of federal courts over a particular controversy may be limited by federal statutes. Aldinger v. Howard, 427 U.S. 1, 13-14, 96 S.Ct. 2413, 2419-20, 49 L.Ed.2d 276 (1976). Indeed, the United States Supreme Court described the jurisdictional hierarchy as follows:

> It is apparent that Gibbs delineated the constitutional limits of federal judicial power. . . . Constitutional power is merely the first hurdle that must be overcome in determining that a federal court has jurisdiction over a particular controversy. For the jurisdiction of federal courts is limited not only by the provisions of Art. III . . . but also by Acts of Congress.

Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 371-72, 98 S.Ct. 2396,

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our holding in this case applies with equal force to the new law since the statutory provisions are identical.