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Allen v. Hardy

478 U.S. 255 (1986)

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June 29, 1986

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for Allen v. Hardy, No. 85-6593

No. 85-6748, Williams v. Illinois

Petr, who is black, pleaded guilty to murder, and a jury sentenced him to death. Ill. Sup. Ct. affirmed, People v. Williams, 97 Ill.2d 252 (1983), and we denied certiorari, 466 U.S. 981 (1984). Petr then filed this petition for post-conviction relief in Ill. Cir. Ct. That court dismissed the petition, and Ill. Sup. Ct. affirmed.

Ill. Sup. Ct. considered petr's contention that his constitutional rights were violated by the State's exercise of peremptory challenges to exclude blacks from the jury that sentenced him to death. The court noted that it had rejected this contention on direct appeal and that its decision there ordinarily would be res judicata. The court went on, however, to consider a study and an article offered by petr, holding that this evidence did not satisfy the standard of Swain v. Alabama, 380 U.S. 202 (1965).

Seeking cert., petr summarizes the evidence in his case, which consists both of proof concerning the State's peremptory challenges at his trial and of data concerning the racial composition of juries seated in capital cases in Cook County, Ill. He claims that this evidence raised a prima facie case of purposeful, systematic exclusion. The State responds by arguing that, even if Batson v. Kentucky applies retroactively, petr's allegations are irrelevant because they focus on the standard of Swain.

I will vote to deny this petition. Although the facts concerning the State's use of peremptory challenges at petr's trial may well raise a prima facie case under Batson, Allen v. Hardy, No. 85-6593, holds that Batson does not apply on collateral review of a conviction that became final before our decision was announced. Petr's claim under Swain is not certworthy.

My vote is to deny.

L.F.P., Jr.