The Justices Have a Chance to Send a Clear Message About the Right to Fair Trial

OPINION: The U.S. Supreme Court should not bless a flawed process and dilute what it means to receive a "fair trial in a fair tribunal."

Daniel Suleiman, *The National Law Journal* - February 26, 2016

On Monday the U.S. Supreme Court will hear oral argument in the case of Terrance Williams, a prisoner on Pennsylvania's death row who committed two brutal murders when he was a teenager. The question before the court is whether Williams received the impartial hearing our Constitution requires. How his case is decided will send an important message about what it means to get a fair trial in America.

The justices have repeatedly said that "a fair trial in a fair tribunal is a basic requirement of due process." A fundamental aspect of every fair hearing is the impartiality—and appearance of impartiality—of the judge deciding the case. Because one of the Pennsylvania Supreme Court justices who ruled against Williams had, as Philadelphia's district attorney nearly 30 years earlier, authorized his prosecutors to seek the death penalty against Williams, the justices are deciding whether Williams received the due process our system demands for all criminal defendants.

In 1984, at age 17, Williams stabbed and killed Herbert Hamilton. Several months later, before he was caught and after turning 18, he beat Amos Norwood to death with a tire iron. Many people have been executed in the United States for comparable crimes. But if the process wasn't fair, then Williams' sentence cannot stand.

Williams was tried for Hamilton's murder in 1985. Prosecutors sought the death penalty, according to briefs filed in the case, but the evidence at trial showed that Hamilton had sexually abused Williams, and the jury spared Williams' life. The next year, Williams was tried for Norwood's murder. The trial prosecutor (the same one who had tried Williams for Hamilton's murder) was aware that Norwood had also abused Williams. But she did not reveal that information to the defense, as she was required to do, and evidence of Norwood's abuse was not presented to the jury, which convicted Williams and sentenced him to death.

More than 25 years later, after evidence of the prosecutor's misconduct had come to light, a judge threw out Williams' death sentence. Pennsylvania appealed, and in late 2014 the Pennsylvania Supreme Court unanimously overturned the judge's ruling and reinstated the

sentence. But, in what has become the glaring problem in this case, one of the judges who voted against Williams in that decision, Ronald D. Castille, had many years earlier played an important role in his prosecution. Before being elected to the bench in 1993, Castille served as district attorney for Philadelphia. In that position, which he held from 1986 to 1991, he personally authorized his prosecutors to seek the death penalty against Williams for Norwood's murder.

In a Jan. 21, 1986, memorandum, according to the briefs, the trial prosecutor sought approval from her supervisor to pursue the death penalty against Williams. The next day, the supervisor handwrote his recommendation to Castille at the bottom of the memorandum: "Ron, I recommend seeking Death. M. Gottlieb 1/22/86." Castille later added his own handwritten note: "Mark, Approved to proceed on the Death Penalty. Ronald D. Castille." In other words, nearly three decades before ruling on William' appeal as a state supreme court justice—in fact, he was the court's chief justice—Castille personally authorized his prosecutors to seek the death penalty in the very same case.

Williams had asked Castille to disqualify himself from hearing Pennsylvania's appeal. Castille refused, and under Pennsylvania's procedures he was therefore free to participate. Multiple rules of judicial conduct, not to mention common sense, indicate that Castille made the wrong decision.

The Pennsylvania Code of Judicial Conduct requires judges who "served in governmental employment, and in such capacity participated personally and substantially" in a particular case, to disqualify themselves. The code also requires disqualification in proceedings in which a judge "served as a lawyer in the matter in controversy" or in which the judge's "impartiality might reasonably be questioned." The federal law governing judicial disqualification similarly requires all federal judges to disqualify themselves in cases in which they have "served in governmental employment and in such capacity participated as counsel."

Pennsylvania, which is seeking to uphold Williams' death sentence, argues that Castille's involvement in Williams's case was merely "administrative." The argument doesn't hold water. Because Castille personally approved his prosecutors to seek the death penalty against Williams, and a trial prosecutor under his supervision was later found to have withheld important exculpatory evidence from the defense, Castille's participation was both "personal" and "substantial," and he should have stepped aside.

If the justices agree that Castille should have disqualified himself, they will still have to answer the question of whether his participation mattered to the outcome. The Pennsylvania Supreme Court's decision to reinstate Williams' death sentence was unanimous. Six justices voted in favor, zero against. Pennsylvania argues that if Castille had bowed out, Williams would still have lost. In other words, no harm, no foul.

But the fact that Castille participated in the case at all—he actually wrote a vigorous concurring opinion—may well have tainted the entire judicial process, and that ought to be enough to justify finding in Williams' favor. Although it may be tempting merely to count votes and conclude that Williams would have lost no matter what, that result would bless a flawed process and dilute what it means to receive a "fair trial in a fair tribunal."

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