

08-9156 WOOD V. ALLEN

DECISION BELOW:542 F.3d 1281

LOWER COURT CASE NUMBER: 06-16412

QUESTIONS PRESENTED:

1. Whether a state court's decision on post-conviction review is based on an unreasonable determination of the facts when it concludes that, during the sentencing phase of a capital case, the failure of a novice attorney with no criminal law experience to pursue or present evidence of defendant's severely impaired mental functioning was a strategic decision, while the court ignores evidence in the record before it that demonstrates otherwise?
2. Whether the rule followed by some circuits, including the majority in this case, abdicates the court's judicial review function under the Antiterrorism and Effective Death Penalty Act by failing to determine whether a state court decision was unreasonable in light of the entire state court record and instead focusing solely on whether there is clear and convincing evidence in that record to rebut certain subsidiary factual findings?
3. Whether a state court unreasonably applies *Atkins v. Virginia* when it bases its finding that a defendant does not have significant deficits in adaptive functioning and thus is not mentally retarded on an analysis of the defendant's relative strengths in adaptive functioning without considering the defendant's limitations, which is inconsistent with the accepted and established clinical definitions of mental retardation?
4. Whether a petitioner seeking habeas relief in federal court may rely on a comparative juror analysis to demonstrate a *Batson v. Kentucky* violation where that analysis is based on facts from the state trial court record, but was not presented to the state trial court?

CERT. GRANTED 5/18/2009

LIMITED TO QUESTIONS 1 AND 2 PRESENTED BY THE PETITION.