

07-1223 BELL V. KELLY

DECISION BELOW: 2008 WL 59946

LOWER COURT CASE NUMBER: 06-22

QUESTION PRESENTED:

Petitioner asserted ineffective assistance of counsel at sentencing, and the district court found that he had diligently attempted to develop and present the factual basis of this claim in state court, on habeas, but that the state court's fact-finding procedures were inadequate to afford a full and fair hearing. After an evidentiary hearing, the district court found deficient performance but no prejudice and denied relief. The Fourth Circuit affirmed. The questions presented are:

1. Did the Fourth Circuit err when, in conflict with decisions of the Ninth and Tenth Circuits, it applied the deferential standard of 28 U.S.C. § 2254(d), which is reserved for claims "adjudicated on the merits" in state court, to evaluate a claim predicated on evidence of prejudice the state court refused to consider and that was properly received for the first time in a federal evidentiary hearing?
2. Did the Fourth Circuit err when, in conflict with decisions of several courts of appeals and state supreme courts, it categorically discounted the weight of mitigating evidence for Strickland prejudice purposes whenever the evidence could also have aggravating aspects?
3. Does Virginia's use and/or manner of administration of sodium thiopental, pancuronium bromide, and potassium chloride, individually or together, as a method of execution by lethal injection, violate the Cruel and Unusual Punishment Clause?

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION

CERT. GRANTED 5/12/2008