

Aggravatingly Ineffective: Supremes Say Counsel Must Investigate and Mitigate By: Lance Hester; July 2005

In the June 20, 2005, decision of the US Supreme Court, Justice Souter penned law holding defense counsel is ineffective when it fails to investigate a defendant's prior conviction files, medical and mental health records, and family information.

In 1988 Mr. Rompilla was convicted of stabbing, robbing, and setting on fire a tavern owner in Pennsylvania. The jury sentenced him to death. During the penalty phase the jury found the aggravating factors that the murder was committed during a felony, that it was done by torture, and that the defendant's significant history of convictions indicated he was violent.

The only mitigating evidence from the defense included five Rompilla family members begging the jury for mercy. The defense had primarily relied on Rompilla's own description of an unexceptional life history. When preparing the case for trial, counsel became aware of publicly available files related to Rompilla's prior violent criminal history. However, defense failed to examine the entirety of those files.

In the Court's opinion, Justice Souter found that because counsel failed to examine the prior conviction files, counsel missed out on opportunities to follow leads that would have pointed their mental health experts to serious and potentially mitigating disorders such as schizophrenia. Counsel missed opportunities to note Mr. Rompilla's prior incarcerations were often related to alcohol. It would have led them to examine juvenile, school, medical and prison records. However, the multitudes mitigating data was never collected because counsel failed to engage in a meaningful examination of the prior conviction court files.

Ultimately, the court held that because of the absence of these records, the likelihood for a different result was sufficient enough to undermine the confidence in the outcome actually reached at sentencing. Information on the case can be found in the US Supreme Court, Case No. 04-5462.

Mr. Rompilla's post-conviction counsel have earned him a new trial because trial counsel was ineffective. Despite what a capital defendant and his family's claim that no mitigating evidence was available, his lawyer was nevertheless bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the trial's sentencing phase.