9th Circuit grapples with habeas limits

Recent US Supreme Court decision limits appellate courts from hearing new evidence.

By Henry Meier

In a case that highlights limits on appellate courts to weigh new evidence in habeas cases, the 9th U.S. Circuit Court of Appeals released a published opinion Wednesday that puts one man's appeal back in front of the state Supreme Court.

The three-judge panel found that appellant Jesse Gonzales' claim that prosecutors had withheld evidence in his case was a violation of guidelines established by the Brady v. Maryland ruling that could materially affect the outcome of his appeal. But the panel abstained from ruling on whether the Gonzales' Brady claim was valid, instead sending the case back to the state in light of the U.S. Supreme Court decision in Collen v. Pinholster, 131 U.S. 108 (2011).

Gonzales was convicted and sentenced to death for the 1979 murder of a Los Angeles County Sheriff's Department deputy during a drug raid at his cousin's house. He never contested his role in the shooting but maintained the circumstances were different than those put forth by the prosecution and did not warrant the death penalty.

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The 9th Circuit panel focused on the testimony of a government witness, William Acker, who claimed that Gonzales told him while they were both in jail that he knew the deputies were coming to raid the house and that he planned to "bag a cop."

However, prison mental health records that were turned over by the prosecution after the case was at the federal appellate level reveal that Acker may have been an unreliable witness who suffered from mental illness and had routinely lied to officials.

This new evidence was enough to give the appellate justices pause.

The court found that when the state Supreme Court denied the appellants' assertion that prosecutors had failed to turn over exculpatory evidence, they still did not have access to additional records that were uncovered during the federal hearings.

Pinholster forbids the circuit court from considering any evidence the lower courts have not seen in habeas cases, which forces them to remand the case back to the state courts for review.

While the panel could not rule based on the new evidence, Circuit Judge Richard Clifton wrote for the panel that it "appears to ... strengthen Gonzales's Brady claim to the point that his argument would be potentially meritorious..." Gonzalez v. Wong, 2011 DJDAR 17552.

Linda Starr, the legal director of the Northern California Innocence Project, said that Clifton got it mostly right but was unsure whether it was necessary to have the state court look at it again.

"It seems like an unwise use of judicial resources to remand it to the state if there is enough evidence to overturn," she said. "That said, it's not a stupid decision to send it back to the state court."
Circuit Judge Diarmuid O'Scannlain wrote a dissenting opinion that the case had been already heard on its merits and there was no need to remand back to the state court.

O'Scannlain has made known his opinions on such cases before. The issue of habeas appeals has divided him and other circuit judges in recent months.

Erwin Chemerinsky, dean of the UC Irvine School of Law, said the opinion points the way for new evidence to be heard after cases get to the federal level in light of the Pinholster decision.

"There has to be a way for someone with a meritorious claim to have new evidence heard," he said. "I think a better thing to do would be to have the federal court hold an evidentiary hearing, but this fashions a way to deal with the harsh ramifications of Pinholster while maintaining the U.S. Supreme Courts guidelines."

U.S. firms to enter that territory.

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