



WEEKLY REPORT ON NEW DECISIONS
CRIMINAL LAW DIVISION
CALIFORNIA DEPARTMENT OF JUSTICE



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UNITED STATES SUPREME COURT
Moona Nandi, U.S. Supreme Court Monitor

OPINIONS

DEF., A CAPITAL MURDERER SEEKING TO REOPEN A FEDERAL HABEAS CASE, MAY BE ENTITLED TO A CERTIFICATE OF APPEALABILITY ON A CLAIM OF RACIAL BIAS BY A JUROR

Tharpe v. Sellers - Filed Jan. 8, 2018, in 17-6075 [2018 WL 311568; 2018 U.S.Lexis 616].

Facts: Def., convicted of capital murder, moved to reopen his federal habeas corpus proceedings regarding the claim that his jury included a white juror who was biased against him because he is black. The District Court denied the motion because, among other things, the claim had been procedurally defaulted in state court and def. had failed to produce any clear and convincing evidence contradicting the state court’s determination that def. was not prejudiced by the white juror’s presence. The Eleventh Circuit denied a certificate of appealability.

Held: (1.) The white juror’s affidavit asserting that def. was not in the “good” black folks category and questioning whether black people even have souls presented a strong factual basis for the argument that def.’s race affected the juror’s vote for a death verdict. Remanded for further consideration of whether def. is entitled to a certificate of appealability.
 (PER CURIAM.)

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