Appendix C: Incomplete List of Capital Judgments Reversed on State Post-Conviction and Related Types of Review

Introduction and Key

This Appendix contains an incomplete list of the capital cases in which state post-conviction relief was granted between 1973 and April 2000. The list is incomplete because many state post-conviction decisions (whether or not relief was granted) are not published, and information on some of them is not available except by a search—beyond our capacity—of the records of each of thousands of local, intermediate and statewide courts throughout the United States with potential jurisdiction over capital state post-conviction cases.

Because we only collected information about reversals, this list does not permit an accurate count of the proportion of capital judgments finally reviewed by state post-conviction courts during the study period that were affirmed or reversed. As we now explain, however, it is possible to use our data to make a different calculation that can serve as an extremely conservative estimate of the state post-conviction reversal rate.

From our direct appeal study, we can determine the number of capital judgments that “cleared” state direct review during the study period and thus were available for state post-conviction review. We also know that nearly all capital judgments that “clear” direct appeal go on to be reviewed by a state post-conviction court. See Report, pp. 19-20. Obviously, a sizeable number of capital judgments that “cleared” direct appeal and were subjected to state post-conviction review during the study period were pending in front of, and had not yet been finally reviewed by, state post-conviction courts as of the end of the study See Report, at note 132. But because we do not know how many cases were in that posture, we are forced to compute the number of capital judgments that were reversed during the study period due to serious error as a percentage of the state post-conviction cases that were available to be reviewed (whether or not they were actually decided). In this Report, we accordingly use that calculation—the number of known state post-conviction reversals of capital judgments taken as a proportion of all capital judgments available for state post-conviction review (available in the sense that they had cleared state direct appeal)—as a very conservative proxy for (meaning as a number that is reliably equal to or (in most cases) lower than) the number we actually are interested in, namely, the number of known reversals taken as a proportion of the capital judgments actually reviewed on state post-conviction.

The data in this Appendix were collected during April 2000. Multiple capital attorneys in each of the 28 states on which this study focuses (states in which at least one capital judgment was reviewed on federal habeas corpus between 1973 and 1995) were asked to report all known cases within their state in which capital judgments were overturned during state post-conviction proceedings since 1973, and to provide as much information as was available about: (1) the name of the capital prisoner granted state post-conviction relief, (2) the citation of, or other identifying information about, the decision granting relief, (3) the date of the decision, (4) the reason for the reversal, and (4) the outcome on retrial of the conviction or sentence. We received information from 26 of the 28 states (all but Delaware and Washington). In all cases, the reporting attorney cautioned that the list was, or may be, incomplete. Where possible, using the national reporter system and Westlaw, the information provided was verified.
and supplemented. Also verified were all unpublished decisions from Nevada (as to which the relevant unpublished opinions were provided); unpublished decisions from Arizona and Texas, as to which a Westlaw newspaper search and information available from the state departments of corrections was used; and a few additional unpublished cases where secondary sources (which are cited in the list below, see, e.g., the Knapp case in Arizona) were available. Other unreported information has not been verified, although in most instances, we have identified the case sufficiently to permits verification using local court records—a task for future research.

Included in this list are all decisions we were able to identify in which capital convictions or death sentences were set aside during the pendency of state post-conviction proceedings based on legal error with the concurrence of some state official, including state trial and appellate judges, district attorneys and state attorneys general (e.g., in confessing error and agreeing to a new trial or a lesser sentence), and governors (e.g., through commutation mechanisms that were used for the specific purpose of providing remedies for legal error).

Reported via a citation, a short narrative description, and a variety of notations explained in the “Key” below, are the case name, date (including whether or not the case fell within the study period), the reason for reversal, if known, and the outcome of the case on retrial following reversal, if known. Unless otherwise specified, references to the “trial court” are to the trial-level court with responsibility for deciding state post-conviction petitions in the first instance.

Key:

**Timing**: * = Decided after study period (1996 or after). All other cases were decided during the study period.

**Basis for Relief**:
- IAC = ineffective assistance of counsel
- PSE = prosecutorial suppression of evidence
- PM = other prosecutorial or law enforcement misconduct
- I = unconstitutional jury instructions
- JB = judge or juror bias
- O = other basis for relief
- UK = unknown basis for relief

**Result on Retrial**:
- L = a sentence less than death was imposed, either based on the original conviction of capital murder or based on a new conviction of capital or some lesser degree of murder
- NG = on retrial, the individual was found not guilty of capital or any other degree of murder—by judicial or jury verdict, dismissal of the charges, the dropping of charges, a formal pardon, or the like
- D = new death sentence imposed, either based on the original conviction of capital murder or based on a new conviction of capital murder
- RP = retrial pending
DW = died while awaiting a new trial
? = outcome on retrial unknown
Summary of National Composite Results

Reversals pre-1996: 248
Reversals 1996 and after: 94 (over 52 months = average of 22/year)

Total reversals (1973- Apr. 2000): 342

Basis for Relief:
- Total Known: 289
  - IAC = 107* (37% of known)
  - PSE = 46* (16% of known)
  - PM = 10 (3% of known)
  - PSE/PM = 56 (19% of known)
  - IAC/PSE/PM = 161* (56% of known)
  - JB = 12 (4% of known)
  - I = 57 (20% of known)
  - O = 59 (21% of known)
  - UK = 53

* Note: in two cases, the basis for relief was both IAC and PSE.

Result on Retrial:
- Total Known (total minus RP, DW and ?) = 301
  - L = 225 (75% of known)
  - NG = 22 (7% of known)
  - L/NG = 247 (82% of known)
  - D = 54 (18% of known)
  - RP = 37
  - DW = 1
  - = 3
Jimmy Wayne Davis v. State (Talladega Cnty. Cir. Ct., Case No. 90-086, Dec. 15, 1995) (during pendency of state post-conviction petition raising ineffective assistance of counsel claims, among others, and following state supreme court’s order requiring trial counsel to submit to deposition based on substantial showing of ineffective assistance, see Ex parte Davis, 628 So.2d 530 (Ala. 1993), state agreed to withdrawal of death sentence and imposition of sentence of life in prison without parole) [IAC, L]

Ex parte Floyd, 571 So.2d 1234 (Ala. 1990) (conviction overturned because prosecutor intentionally discriminated against African American jurors by using his first 11 (of 12) peremptory challenges to strike all 11 African-Americans in the jury venire; resentedenced to life) [PM, L]

State v. Freeman, 605 So.2d 1258 (Ala. Crim. App. 1992) (conviction and death sentence overturned by trial court due to jury foreman’s prejudicially inaccurate and incomplete answers under oath to questions about bias during jury selection; resentedenced to life) [JB, L]

Johnny Harris v. State (Baldwin Cnty. Cir. Ct., Case No. 6699, July 1, 1981) (conviction and death sentence reversed on writ of error coram nobis because state failed to disclose evidence impeaching one of its principal witnesses at Harris’ trial and because an exculpatory defense witness was unavailable at the time of Harris’ trial; proceedings are described in a subsequent opinion reviewing a death sentence imposed on retrial, see Harris v. State, 552 So.2d 857 (Al. Crim. App. 1989)) [PSE, D]

Jefferson v. State, 645 So. 2d 313 (Ala. Crim. App. 1994) (conviction and death sentence overturned because state withheld exculpatory evidence that someone other than the defendant committed the crime and that seriously impeached the credibility of two key prosecution witnesses; resentedenced to life) [PSE, L]


Walter McMillian v. State, 616 So. 2d 933 (Ala. Crim. App. 1993) (conviction and death sentence overturned because state suppressed exculpatory evidence impeaching its principal witness (who subsequently recanted) and failed to disclose evidence creating a reasonable probability that the outcome of the guilt-innocence trial would have been different had the evidence been disclosed; petitioner was subsequently released from custody for lack of any evidence of guilt) [PSE, NG]


Hamilton v. State, 677 So.2d 1254 (Ala. Crim. App. 1995) (conviction overturned because the prosecutor permitted the state's principal witness to perjure himself, withheld other exculpatory evidence, and committed other forms of misconduct and because Hamilton’s lawyer was egregiously ineffective; on retrial, Hamilton was convicted of a lesser offense and sentenced to a 20-year term) [PSE, L]

*Judy Haney v. State (Talladega Cnty. Cir. Ct., Case No. 87-559, Oct. 9, 1997) (during pendency of state post-conviction proceeding, state agreed to withdrawal of death sentence and imposition of life sentence) [UK, L]

Darryl Watkins v. State, 659 So.2d 689 (Ala. Crim. App. 1995) (during pendency of state post-conviction appeal, the prosecutor requested that the sentence of death imposed in the case be set aside and that Watkins be resentedenced to life;
the trial court approved the settlement, and the appeal was dismissed as moot) [UK, L]

*Ex parte Womack*, 541 So. 2d 47 (Ala. 1988) (conviction and death sentence overturned because state (1) misrepresented that it had no plea bargain or other arrangement with the key witnesses against Womack at the time of trial, (2) knowingly suppressed a variety of evidence that the state’s own witness may have been guilty of the crime in question, (3) withheld police reports revealing inconsistencies between key witnesses’ testimony and their statements to the grand jury, (4) suppressed evidence of witness’s attempt to recant grand jury testimony implicating Womack in the crime; conviction and sentence overturned, as well, because Womack received ineffective assistance of counsel when his own attorney took the stand and testified against him; resentenced to life) [PSE (also IAC), L]

Pre-1996: 11
1996 and after: 1

Basis for Relief: IAC = 1; PSE = 5; PM = 1; JB = 1; UK = 4
Result on Retrial: L = 10; NG =1; D = 1
State v. Britson (Pima Cnty. Super. Ct.) (sometime between 1981 and 1988, as described in subsequent opinion reviewing subsequent (noncapital) criminal judgment, Britson v. Lewis, 1988 WL 131765 (9th Cir. Nov. 29, 1988), trial court on third state post-conviction petition overturned death sentence based on ineffective assistance of counsel at the penalty phase, and a life sentence was imposed) [IAC, L]

State v. Carriger, 645 P.2d 816 (Ariz. 1982) (death sentence overturned due to ineffective assistance of trial counsel who acted as “neutral observer,” not zealous advocate; Carriger was resentenced to death, although he ultimately was granted federal habeas relief and was released from custody) [IAC, D]


State v. Fisher, 859 P.2d 179 (Ariz.1993) & 730 P.2d 825 (Ariz. 1986) (conviction overturned based on ineffective assistance of counsel and state’s premising plea bargain with principal witness against Fisher upon her giving testimony specified by the state; Fisher not thereafter returned to death row) [IAC & PSE, L]


State v. Schad, 691 P.2d 710 (Ariz. 1984) (conviction overturned due to failure to instruct jury on crucial elements of first-degree murder; resentenced to death) [I, D]

State v. Serna (Maricopa Cnty. Super. Ct. No. 150464, 1994) (conviction overturned due to prosecutor’s obstruction of defense’s ability to find exculpatory witness; on retrial, state offered and Serna accepted a guilty plea to manslaughter, after which he was sentenced to time served and was released from prison, see From Death Row to Halfway House, Phoenix Gazette, Jan. 24, 1995, at B1, 1995 WL 2752207) [PSE, NG]


State v. Raymond Tison, 774 P.2d 805 (Ariz. 1989) (death sentence reversed because sentencer previously failed to determine that defendant had sufficient culpability to justify death penalty under Eighth Amendment; resentenced to life,


State v. White (Yavapai Cnty. Super. Ct. No. 101738, 1990) (death sentence overturned due to ineffective assistance of counsel, as described in subsequent opinion reviewing the death sentence that was imposed on retrial, see State v. White, 982 P.2d 819 (Ariz. 1991)) [IAC, D]

*State v. Willoughby (Maricopa Cnty Super. Ct., No. CR 91-10184, Nov. 1999) (conviction overturned due to ineffective assistance of counsel; retrial pending) [IAC, RP]

Pre-1996: 12
1996 and after: 3

Basis for Relief: IAC = 6; PSE = 2; IAC & PSE = 1; I =1, O = 4, UK = 1
Result on Retrial: L = 8; NG = 2; D = 3; RP = 2
ARKANSAS

*Neal v. State*, 623 S.W.2d 191 (Ark. 1981) (death sentence overturned and life sentence imposed by state supreme court based on ineffective assistance at sentencing phase) [IAC; L]

*Sheridan v. State*, 959 S.W.2d 29 (Ark. 1998) (conviction overturned due to representation by attorney with blatant conflict of interest; resentenced to life) [IAC, L]

*Adrian Tisdale* (conviction overturned due to ineffective assistance of 90-year-old trial attorney who died immediately after defendant’s trial; life sentence imposed on retrial, see *Tisdale v. State*, 843 S.W.2d 803 (Ark. 1993)) [IAC, L]

Pre-1996: 2
1996 and after: 1

Basis for Relief: IAC = 3
Result on Retrial: L = 3
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CALIFORNIA

*In re Brown, 17 Cal.4th 873 (1998) (conviction and death sentence overturned due to prosecutorial suppression of exculpatory evidence; resentenced to death) [IAC, D]

*In re Gay, 19 Cal.4th 771 (1998) (death sentence overturned due to ineffective assistance of counsel; retrial pending) [IAC, RP]

In re Hitchings, 6 Cal.4th 97 (1993) (conviction and death sentence overturned due to juror misconduct; Hitchings pled to lesser offense and sentence) [JB, L]

*In re Jones, 13 Cal.4th 552 (1996) (conviction and sentence overturned due to ineffective assistance of counsel; Jones subsequently was released in lieu of retrial) [IAC, NG]

In re Marquez, 1 Cal.4th 584 (1992) (death sentence overturned due to ineffective assistance of counsel; Marquez was not thereafter returned to death row) [IAC, L]

Oscar Morris (after having death sentence overturned on direct appeal in 1988, Morris had his capital conviction overturned by the L.A. Superior Court in a state post-conviction proceeding; outcome unknown) [UK, ?]

In re Neely, 6 Cal.4th 901 (1993) (conviction overturned due to ineffective assistance of counsel; on retrial, Neely received a life sentence) [IAC, L]

In re Sixto, 48 Cal.3d 1247 (1989) (conviction overturned based on ineffective assistance of counsel; lesser sentence imposed on retrial) [IAC, L]

In re (Laird) Stankewitz, 40 Cal.3d 391 (1985) (conviction overturned due to juror misconduct; lesser sentence imposed on retrial) [JB, L]

In re Wilson, 3 Cal.4th 945 (1992) (conviction overturned based on ineffective assistance of counsel; resentenced to death) [IAC, D]

pre-1996: 7
1996 and after: 3

Basis for Relief: IAC = 7; JB = 2; UK =1
Result on Retrial: L = 5; NG = 1; D = 2; RP =1; ? = 1
DELAWARE [No available information]
FLORIDA [all defendants resentenced to sentence less than death unless otherwise indicated]

*Arango v. State*, 467 So.2d 692 (Fla. 1985) (conviction overturned due to prosecutorial suppression of evidence of innocence; resentenced to death) [PSE, D]

*Arango v. State*, 497 So.2d 1161 (Fla. 1986) (second conviction overturned due to prosecutorial suppression of exculpatory evidence supporting Arango’s defense that someone else committed the offense) [PSE, L]

*Bassett v. State*, 541 So.2d 596 (Fla. 1989) (death sentence overturned due to ineffective assistance of counsel in failing to discover and present mitigating evidence) [IAC, L]

*Bates v. Dugger*, 604 So.2d 457 (Fla. 1992) (death sentence overturned due to ineffective assistance of counsel; death sentence imposed on retrial) [IAC, D]


*Larry Brown v. State*, Pinellas Cnty Cir. Ct. (Feb. 18, 1994) (on remand for an evidentiary hearing on ineffective assistance of counsel as ordered by *Brown v. State*, 596 So.2d 1026 (Fla. 1992), state agrees to a sentence less than death) [IAC, L]

*Burr v. State*, 576 So.2d 278 (Fla. 1990) (death sentence overturned due to sentencer’s reliance on alleged but unconvicted offenses as aggravating circumstances) [O, L]

*Clark v. State*, 690 So.2d 1280 (Fla. 1997) (death sentence overturned due to ineffective assistance of counsel at the sentencing trial) [IAC, L]

*Combs v. State*, 525 So.2d 853 (Fla. 1988) (death sentence overturned due to improper and prejudicial instruction barring jury from considering mitigating circumstances) [I, L]

*Cooper v. Dugger*, 526 So.2d 900 (Fla. 1988) (same as *Combs*; resentenced to death) [I, D]

*Copeland v. Dugger*, 565 So.2d 1348 (Fl. 1990) (same as *Combs*) [I, L]

*Deaton v. Dutton*, 635 So.2d 4 (Fla. 1993) (death sentence overturned due to ineffective assistance of counsel and improper instruction at sentencing hearing) [IAC, L]

*Dugan v. Wainwright*, 448 So.2d 1005 (Fla. 1984) (conviction overturned due to ineffective assistance on appeal; death sentence imposed on retrial) [IAC, D]

*Downs v. Dugger*, 514 So.2d 1069 (Fla. 1987) (same as *Combs*) [I, D]


*Henry Espinosa*, Dade Cnty. Cir. Ct. (Jan. 12, 1999) (during pendency of state post-conviction petition for relief in trial
court based on evidence of prosecutorial suppression of evidence and ex parte contacts with trial court on sentencing, state offers and Espinosa accepts life sentence in return for dropping his claims) [PSE, L]

_Foster v. State_, 518 So.2d 901 (State 1987) (same as _Combs_; death sentence imposed on retrial) [I, D]

_Garcia v. State_, 622 So.2d 1325 (Fla. 1993) (death sentence overturned due to state’s suppression of witness statement that Garcia was not the shooter and state’s closing argument identifying Garcia as the shooter and due to ineffective assistance of counsel) [PSE (also IAC), L]

_Gorham v. State_, 597 So.2d 782 (Fla. 1992) (conviction overturned due to prosecutorial suppression of evidence impeaching its principal witness) [PSE, L]

_Frank Griffin v. State_ (Dade Cnty. Cir. Ct. Aug. 14, 1991) (during pendency of state post-conviction petition and upon trial court’s suggestion that counsel “work out” the case, state agrees to sentence less than death) [UK, L]

_Kenneth Griffin v. State_ (Bradford Cnty. Cir. Ct. Apr. 28, 1993) (following filing of state post-conviction petition alleging prosecutorial suppression of evidence and other misconduct and newly discovered evidence, state agrees to sentence less than death) [PSE, L]

*_Gunsby v. State_, 670 So.2d 920 (Fla. 1996) (new trial required due to cumulative effect of ineffective assistance of counsel in failing to discover exculpatory evidence that Gunsby was not the perpetrator, and the state’s suppression of the fact that two of its crucial witnesses testified against Gunsby only after being promised lenient treatment in their own criminal cases; state did not seek death sentenced on retrial and life sentence was imposed upon reconviction) [IAC & PSE, L]

_Hall v. State_, 541 So.2d 1125 (Fla.1989) (same as _Combs_; resentenced to death) [I, D]

_Harvard v. State_, 486 So.2d 537 (Fla. 1986) (death sentence overturned due to trial court’s refusal to consider nonstatutory mitigating circumstances) [O, L]


_Heiney v. State_, 620 So.2d 171 (Fla. 1993) (death sentence overturned due to ineffective assistance at sentencing phase for failure to investigate and discover mitigating evidence) [IAC, L]

_Hildwin v. Dugger_, 654 So.2d 107 (Fla. 1995) (death sentence overturned due to ineffective assistance of counsel at sentencing; death sentence imposed on retrial) [IAC, D]

_Hill v. State_, 473 So.2d 1253 (Fla. 1985) (conviction overturned due to trial court’s failure to hold hearing on Hill’s competency to stand trial, despite substantial evidence that defendant, who was retarded and subject to grand mal seizures, was incompetent to plead guilty) [O, L]

_Holmes v. State_, 429 So.2d 297 (Fla. 1983) (death sentence overturned due to ineffective assistance of counsel at the penalty phase) [IAC, L]

_Hudson v. State_, 614 So.2d 482 (Fla. 1993) (death sentence overturned due to ineffective assistance of counsel at the penalty phase; death sentence imposed on retrial) [IAC, D]

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James v. State, 615 So.2d 668 (Fla. 1993) (death sentence overturned due to improper instruction on unconstitutionally vague aggravating circumstance) [I, L]


Paul Johnson v. Wainwright, 490 So.2d 838 (Fla. 1986) (conviction overturned due to ineffective assistance of counsel on appeal; death sentence imposed on retrial) [IAC, D]

*Jones v. State, 740 S0.2d 520 (Fla. 1999) (conviction overturned because Jones was incompetent to stand trial; retrial pending) [O, RP]

Lara v. State, 581 So.2d 1288 (Fla. 1991) (death sentence overturned due to ineffective assistance of counsel at sentencing hearing; resentenced to death) [IAC, D]

Leduc v. State, (Okaloosa Cnty. Cir. Ct.) (conviction overturned by trial court on remand, which was ordered by Leduc v. State, 415 So.2d 721 (Fla. 1982), for evidentiary hearing on claims of ineffective assistance of counsel and consequently involuntary guilty plea) [IAC, L]


Jose Maqueira v. State  (Dade Cnty. Cir. Ct. Feb. 10-11, 1993) (on the day after a state post-conviction petition was filed, the state agreed to a sentence less than death) [UK, L]

Mason v. State, 597 So.2d 776 (Fla. 1992) (same as Combs) [I, L]

Maxwell v. State, 603 So.2d 490 (Fla. 1992) (same as Combs) [I, L]

State v. Michael, 530 So.2d 929 (Fla. 1987) (death sentence overturned due to penalty-phase lawyer’s ineffective assistance in failing to investigate and to discover substantial mitigating evidence based on Michael’s mental condition) [IAC, L]
McCray v. State, 510 So.2d 874 (Fla. 1987) (same as Combs; resentedenced to death) [I, D]

Mikenas v. Dugger, 519 So.2d 601 (Fla.1988) (same as Combs; resentedenced to death) [I, D]

Mitchell v. State, 595 So.2d 938 (Fla. 1992) (death sentence overturned due to ineffective assistance of counsel at sentencing hearing) [IAC, L]

Morgan v. State, 515 So.2d 975 (Fla.1987), cert. denied, 486 U.S. 1036 (1988) (same as Combs) [I, L]

O'Callaghan v. State, 542 So. 2d 1324 (Fl. 1989) (same as Combs) [I, L]

Anthony Ray Peek v. State (conviction overturned by trial court because state introduced false forensic evidence; reversal noted in opinion reviewing death sentence that was imposed on retrial, State v. Peek, 488 So.2d 52, 53 (Fla. 1986)) [PSE, D]

Phillips v. State, 608 So.2d 778 (Fla. 1992) (death sentence overturned due to ineffective assistance of counsel at sentencing; death sentence imposed on retrial) [IAC, D]

*Porter v. State, 723 So.2d 191 (Fla. 1998) (death sentence overturned because the sentencing judge was manifestly biased against Porter on the issue of sentence; life sentence imposed on retrial on Dec. 2, 1999) [JB, L]

Preston v. State, 564 So.2d 120 (1990) (death sentence overturned because sentencer relied on invalid aggravating circumstance; death sentence imposed on retrial) [O, D]

Riley v. Wainwright, 517 So.2d 656 (Fla.1987) (same as Combs) [I, L]

Rivera v. Dugger, 629 So.2d 105 (Fla. 1994) (death sentence overturned because sentencer considered multiple invalid aggravating circumstances) [O, L]

Roman v. State, 528 So.2d 1169 (Fla. 1988) (conviction overturned due to state’s failure to disclose highly exculpatory statements by witness who gave highly inculpatory testimony at trial) [PSE, L]

*Rose v. State, 675 So.2d 567 (Fla. 1996) (death sentence overturned due to ineffective assistance of counsel at sentencing; death sentence imposed on retrial) [IAC, D]

Sawyer v. State (Dade Cnty. Cir. Ct. Aug. 6, 1976) (motion to mitigate sentence granted and sentence reduced to life) [O, L]

Scott v. Dugger, 604 So.2d 465 (Fla. 1992) (death sentence overturned as disproportionate to life sentence given equally or more culpable codefendant) [O, D]

Henry Perry Sireci (death sentence overturned by trial court because state relied on incompetent mental evaluations of defendant’s mental condition at the time of the offense; reversal noted in opinion reviewing death sentence imposed on retrial, State v. Sireci, 587 So.2d 450, 451 (1991)) [PSE, D]

*Spaziano v. State, 692 So.2d 174 (Fla. 1997) (conviction overturned on fifth successive state post-conviction petition due to recantation of key witness against defendant) [O, L]
*Stevens v. State*, 552 So.2d 1082 (Fla. 1989) (death sentence overturned due to ineffective assistance of counsel at sentencing hearing; resentenced to death) [IAC, D]

*Suarez v. State*, 604 So.2d 488 (Fla. 1992) (following remand for an evidentiary hearing on bias of sentencing judge as revealed by his pre-sentencing statements to the press, new judge overturned death sentence on Mar. 8, 1992, and state’s appeal thereafter was dismissed on state’s stipulation) [JB, L]

*Thomas v. State*, 546 So.2d 716 (Fla. 1989) (death sentence overturned because sentencer prejudicially failed to consider nonstatutory mitigating circumstances) [O, L]


*Torres-Arboleda v. State*, 636 So.2d 1321 (Fla. 1994) (death sentence overturned due to ineffective assistance of counsel at penalty trial) [IAC, L]

*Charles Vaught v. State* (Leon Cnty. Cir. Ct.) (on remand for evidentiary hearing on ineffective assistance of counsel claims, as ordered by Vaughts v. State, 442 So.2d 217 (Fla. 1985), state agreed to a sentence less than death) [IAC, L]

*Waterhouse v. State*, 522 So.2d 341 (Fla. 1988) (same as *Combs*; resentenced to death) [I, L]

*Way v. Dugger*, 568 So.2d 1263 (Fla. 1990) (same as *Combs*; resentenced to death) [I, L]

*Richard Williams v. State* (Bradford Cnty. Cir. Ct. May 23, 1985) (upon suggestion of Florida Supreme Court in denying direct appeal in State v. Williams, 438 So.2d 781 (Fla. 1983) that post-conviction relief might be appropriate in regard to claim of ineffective assistance of counsel due to trial court’s denial of continuance, Williams files petition for post-conviction relief and state immediately agreed to a sentence less than death) [IAC, L]

[Wilson v. Wainwright, 474 So.2d 1162 (Fla. 1985) (conviction overturned due to egregious ineffective assistance of Wilson’s appellate attorney; on reappeal, the Florida Supreme Court determined that the evidence did not support a death sentence, and ordered that a life sentence be imposed) [IAC, L]]

*Young v. State*, 739 So.2d 553 (Fla. 1999) (death sentence overturned due to state’s suppression of eyewitness statements to police supporting Young’s defense that he fired his weapon in self-defense only after the victim had first fired a shot at Young; resentenced to life) [PSE, L]

*Zeigler v. Dugger*, 524 So.2d 419 (Fla.1988) (same as *Combs*; resentenced to death) [I, D]

Pre-1996: 64
1996 and after: 10

Basis for Relief: IAC = 21; IAC & PSE = 1; PSE = 12; I =17; JB = 2; O = 11; UK = 10
Result on Retrial: L = 52; D = 21; RP = 1

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1 This case came to our attention too late to be included in our state and nationwide computations.
GEORGIA

*State v. Anderson* (Cook Cnty Super. Ct. No. 9854, Apr. 1, 1975) (trial court overturns death sentence and imposes lesser sentence due to absence of aggravating circumstances) [O, L]

*Banks v. State*, 268 S.E.2d 230 (Ga. 1980) (ordering new trial based on counsel’s failure to discover evidence of innocence; on remand, petitioner was released for lack of any evidence of guilt, Henry Cnty. Super. Ct. No. 10032) [IAC, NG]

*Eli Beck v. Zant* (Bleckley Cnty. Super. Ct. No. 8563) (after state supreme court remanded Beck’s successive state post-conviction petition to trial court for hearing to determine whether Beck was retarded, hence ineligible for the death penalty under the state constitution, see *Zant v. Beck*, 386 S.E.2d 349 (Ga. 1989), and during pendency of that proceeding, state Board of Pardons and Parole ruled that Beck was retarded and imposed a life sentence on May 2, 1994) [O, L]

*Birt v. Hopper*, 265 S.E.2d 276 (Ga. 1980) (affirming reversal of death sentence because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; resentenced to death) [I, D]


*State v. Earl Charles* (Chatham Cnty. Super. Ct. No. 23392-95, July 5, 1978) (trial court granted Charles’s extraordinary motion for new trial; charges against Charles were dropped for lack of any evidence of guilt) [UK, NG]

*Turpin v. Christenson*, 497 S.E.2d 216 (Ga. 1998) (death sentence overturned due to ineffective assistance of counsel; retrial pending) [IAC, RP]

*Curry v. Zant*, 371 S.E.2d 647 (Ga. 1988) (conviction overturned due to counsel’s ineffective failure to secure expert evaluation of Curry’s mental status at the time of the offense which would have provided substantial evidence that Curry was not sane at the time of the offense, nor capable of intelligently and voluntarily waiving his right to counsel when he confessed; on retrial, Curry pled to life (Washington Cnty. Super. Ct. No. 7)) [IAC, L]

*Kenny Dampier v. Zant* (Butts Cnty. Super. Ct. No. 5617, Aug. 31, 1982) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, 2

This list excludes 21 cases that the Georgia Supreme Court remanded between Jan. 4, 1990 and May 19, 1995, for hearings to determine whether the prisoner was mentally retarded and thus ineligible for the death penalty under Georgia constitutional law (Finney, Fleming, Foster, G. Davis, Frazier, Holiday, Holiday, Peek, Cohen, Collins, Wilson, Jarrells, Walker, S. Allen, Childs, Morrison, Pruitt, Miller, Rogers). Also excluded are 4 cases in which the Board of Pardons and Paroles found death sentences “disproportionate” and reduced them to life sentences (Charles Harris Hill, Freddie Davis, William Neal Moore, G. Williams).
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regardless of the mitigating circumstances; life sentence imposed on retrial (Chatham Cnty. Super. Ct. No. 26638)) [I, L]

*Stynchcombe v. Floyd*, 311 S.E.2d 828 (Ga. 1984) (death sentence overturned because trial court’s instructions suggested to jury that it had to impose death sentence if it found one aggravating circumstance, notwithstanding the mitigating evidence; life sentence imposed on retrial, Fulton Cnty. Super. Ct. No. A-19628) [I, L]

*Bobby Gene Gaddis v. Hopper* (Tattnall Cnty. Super. Ct. Nos. 36985 & 37095, Sept. 20, 1980) (death sentence overturned because jur instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; life sentence imposed on retrial; direct appeal at Gaddis v. State, 236 S.E.2d 594 (Ga. 1977)) [I]


*Harris v. Hopper*, 253 S.E.2d 707 (Ga. 1979) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; resentenced to life, DeKalb Cnty. Super. Ct. No. 17784) [I, L]


*Jarrell v. Zant*, 284 S.E.2d 17 (Ga. 1981) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; life sentence imposed on retrial) [I, L]

*Krier v. Jarvis* (Butts Cnty. Super. Ct. No. 83-2501-4) (state trial judge granted state habeas corpus relief on ineffective assistance of counsel, and D.A. simultaneously accepted a plea to a life sentence) [IAC, L]


*Turpin v. Lipham*, 510 S.E.2d 32 (Ga. 1998) (death sentence overturned due to ineffective assistance of counsel in presenting jury with 2500 pages of Lipham’s psychiatric records, without presenting an expert or taking any other steps to help the jury to sift through the materials and discover how mitigating the information was; retrial pending) [I, RP]

*Nelson v. Zant*, 405 S.E.2d 250 (Ga. 1991) (state suppressed FBI analyses establishing that the limb hair the state’s expert had used to connect defendant to the crime lacked sufficient characteristics for microscopic analysis). Nelson was thereupon released from prison and not retried because, as the district attorney admitted, there was no valid evidence implicating him in the offense, see Jingle Davis & Mark Curriden, Man Condemned for Murder of Girl Is Freed, Atlanta
State v. Keith Eugene Pattillo (Bibb Cnty. Super. Ct. No. 27738) (after state supreme court remanded Pattillo’s successive state post-conviction petition to trial court for hearing to determine whether Pattillo was retarded, hence ineligible for the death penalty under the state constitution, see State v. Pattillo, 417 S.E.2d 139 (Ga. 1992), and during pendency of that proceeding, state Board of Pardons and Parole ruled that Beck was retarded and imposed a life sentence in 1993) [O, L]

Zant v. Pitts, 436 S.E.2d 4 (Ga. 1993) (death sentence overturned due to ineffective assistance of counsel in failing to inform jury that petitioner was retarded, even though that created a bar to the death penalty under Georgia law; on retrial, judge imposed life sentence, Floyd Cnty. Super. Ct. No. S93A-1151, Aug. 22, 1996)) [IAC, L]


Jessie Lewis Pulliam v. Hopper (Tattnall Cnty. Super. Ct. No. 77-358, June 20, 1979) (death sentence overturned because jury instructions suggested to jury that it must impose death sentence if it found one statutory aggravating circumstance, regardless of the mitigating circumstances; pled to life sentence on retrial, Troup Cnty. Super. Ct. No. 715/143; direct appeal at Pulliam v. State, 224 S.E.2d 8 (Ga. 1976)) [I, L]

Ross v. Kemp, 393 S.E.2d 244 (Ga. 1990) (conviction overturned due to ineffective assistance of counsel and co-counsel who presented contradictory defenses, severely prejudicing Ross; on retrial, state and court accepted a plea to a life sentence, DeKalb Cnty. Super. Ct. No. 83-CR-2635) [IAC, L]

State v. J.L. Smith (DeKalb Cnty. Super. Ct. No. 81CR-3545, May. 10, 1983) (death sentence overturned due to ineffective assistance of counsel; resentsenced to life) [IAC, L]

*State v. Spencer (Butts Cnty. Super. Ct. 91-V-4040) (after state supreme court remanded Spencer’s state post-conviction petition to trial court for hearing to determine whether Spencer was retarded, hence ineligible for the death penalty under the state constitution, trial judge imposed life sentence on July 1, 1996) [O, L]

*Turpin v. Todd, 519 S.E.2d 678 (Ga. 1999) (death sentence overturned due to prejudicial communications between bailiff and jury during sentencing deliberations; retrial pending) [PM, RP]

Pre-1996: 24
1996 and after: 5

Basis for Relief: IAC = 10; PSE = 1; PM = 2; I = 8; O = 5; UK = 3
Result on Retrial: L = 22; NG =3, D = 1; RP = 3
IDAHO


*Donald Paradis (in May 1996, Idaho governor commuted death sentence on the ground of probable innocence, ineffective assistance of counsel and prosecutorial suppression of evidence (see Paradis v. Arave, 130 F.3d 385, 388 (9th Cir. 1997)) [IAC & PSE, L]

*Shawn Eric Smith v. State (Booneville Cnty. Dist. Ct., 7th Jud. Dist., Dec. 17, 1999) (death sentence overturned due to ineffective assistance of trial counsel in failing to prepare and present a case in mitigation; retrial pending) [IAC, RP]

pre-1996: 1
1996 and after: 3

Basis for Relief: IAC = 2; UK = 2
Result on Retrial: L = 2; RP = 2
*People v. Burrows*, 665 N.E.2d 1319 (1996) (conviction overturned based on admission by key witness against petitioner that she perjured herself at Burrows’ trial, that she alone committed the killing, and that Burrows was elsewhere at the time; Burrows was released) [PSE, NG]

*People v. Caballero*, 688 N.E.2d 658 (Ill. 1997) (remanding for hearing on claim in second state post-conviction petition that Caballero’s death sentence was disproportionate to lesser sentence imposed on codefendant; resentenced to life) [O, L]

*People v. Ondrea Edgeston* (state agrees to life sentence in return for Edgeston’s agreement to drop his state post-conviction petition challenging his conviction and death sentence) [UK, L]

*People v. Fields*, 690 N.E.2d 999 (Ill. 1998) (conviction overturned because trial judge who imposed it (1) was under investigation, eventually substantiated, for taking bribes to “throw” criminal cases, (2) initially solicited a bribe in this case, but then (3) came to realize that his behavior in the case was under FBI scrutiny and changed his behavior) [JB, ?]

*People v. Hawkins*, 690 N.E.2d 999 (Ill. 1998) (same as *Fields, supra*) [JB, ?]

*People v. Jimerson*, 652 N.E.2d 278 (Ill. 1995) (conviction overturned due to prosecutorial suppression of exculpatory evidence and countenancing of perjury by crucial witness against Jimerson who denied being offered, but in fact had accepted, a deal in return for her testimony; during preparation for retrial, Jimerson was cleared of all charges and subsequently pardoned by the governor) [PSE, NG]

*People v. Jones*, 1997 WL 11360 (Ill. July 30, 1997) (conviction overturned due to prosecutorial misconduct; charges subsequently were dropped, and Jones was released as innocent and was pardoned by the governor) [PM, NG]

*People v. Lego*, 660 N.E.2d 971 (Ill. 1995) (conviction overturned due to Lego’s manifest incompetence, due to organic brain damage, to waive counsel and represent himself at his capital trial; resentenced to sentence less than death) [O, L]

*People v. Mack*, 658 N.E.2d 437 (Ill. 1997) (sentence reversed based on ineffective assistance of counsel and insufficient finding of aggravating circumstance; retrial pending) [IAC; RP]

*People v. Morgan*, 719 N.E.2d 681 (Ill. 1999) (death sentence overturned because incompetent trial attorney failed to investigate Morgan’s mental status and thus to find easily accessible psychological and neurological tests results documenting Morgan’s organic brain damage, history of child abuse and other mitigating evidence; retrial pending) [IAC, RP]

*People v. Nitz*, 670 N.E.2d 672 (Ill. 1996) (conviction overturned upon discovery the state suppressed evidence that it was secretly administering psychotropic medications to petitioner throughout his capital trial; on retrial, state dropped request for death penalty) [PSE, L]

*People v. Orange*, 659 N.E.2d 935 (Ill. 1995) (death sentence overturned by trial court due to ineffective assistance of counsel at penalty trial; proceedings challenging conviction are pending) [IAC, RP]

*People v. Owens*, 564 N.E.2d 1184 (Ill. 1990) (remanding to Will County Circuit Court to determine whether Owens was mentally competent to pursue additional proceedings and thus, depending on the outcome of those proceedings, to be executed; on remand, trial court declared Owens unfit) [O, L]
People v. Palmer (Mason Cnty. Cir. Ct. 1996) (same as Nitz, supra; prosecutor confessed error and Palmer received a negotiated sentence of 65 years) [PSE, L]

People v. Perez, 592 N.E.2d 984 (Ill. 1992) (sentence overturned due to ineffective assistance of counsel, who failed to investigate and discover substantial bases for mitigation of sentence; resentedenced to 50-year term) [IAC, L]

*People v. Anthony Porter (Apr. 1999) (during pendency before trial court of Porter’s successive state post-conviction petition challenging his competence to be executed, Porter was released from prison as innocent based on another man’s confession to the crime) [UK, NG]

*People v. Ruiz, 686 N.E.2d 574 (Ill. 1997) (sentence overturned due to ineffective assistance of counsel, who failed to investigate and discover substantial bases for mitigation of sentence; on retrial, trial judge determined that death sentence would be disproportionate to the life sentence given to Ruiz’s co-offender) [IAC, L]

People v. Salazar, 643 N.E.2d 698 (Ill. 1994) (conviction overturned due to instruction shifting burden of proof of guilt to Salazar and ineffective assistance of counsel on appeal; on retrial, Salazar was convicted of a lesser charge, sentenced to time served, and released) [IAC, NG]

*People v. Steidl, 685 N.E.2d 1335 (Ill. 1997) (remanding for hearing on ineffective assistance of counsel at the guilt phase and newly discovered evidence (based on recantation of inculpatory testimony by important witness against Steidl; on remand, trial court overturned the death sentence based on ineffective assistance of counsel at the sentencing phase but denied relief from the conviction, and the state agreed to a life sentence in return for Steidl’s agreement not to appeal) [IAC, L]

*People v. Christopher Thomas (Lake Cnty. Cir. Ct. late 1998 or 1999) (death sentence vacated by trial court based on petition alleging multiple grounds for relief; Thomas was resentenced to a term of years) [UK, L]

*People v. Clarence Towns (St. Clair Cnty. Cir. Ct. 1998 or 1999) (on remand for hearing on ineffective assistance of counsel at penalty trial based on counsel’s manifestly prejudicial failure to discover Towns’ “pervasive history of child abuse and maltreatment, coupled with . . . mental illness,” see People v. Towns, 696 N.E.2d 1128 (Ill. 1998), trial court vacates sentence and orders a new sentencing hearing, which is pending) [IAC, RP]

People v. Titone, 600 N.E.2d 1160 (Ill. 1992) (noting trial court’s unappealed decision, premised on unspecified grounds, overturning Titone’s death sentence; Titone was not returned to death row) [UK, L]

People v. Jimmie Tye (Cook Cnty. Cir. Ct. 1994) (death sentence overturned by trial court based on ineffective assistance of counsel; Tye was resentenced to life) [IAC, L]

*People v. West, 719 N.E.2d 664 (Ill. 1999) (death sentence overturned due to insufficiency of the evidence that the offense was death-eligible and due to ineffective assistance of counsel on appeal; Illinois Supreme Court orders imposition of lesser sentence) [O, L]

People v. William Young (Will Cnty. Cir. Ct. Feb. 1993) (death sentence overturned when state confesses error based on incompetent representation at trial; Young was resentenced to life) [IAC, L]

Pre-1996: 10
1996 and after: 15
Basis for Relief: IAC = 10; PSE = 4; PM = 1; JB = 2; O = 4; UK = 4
Result on Retrial: L = 14; NG = 5; RP = 4; ? = 2
INDIANA

_Averhart v. State_, 614 N.E.2d 924 (Ind. 1993) (death sentence overturned based on ineffective assistance of counsel; resentenced to death) [IAC, D]

William Benirschke (Benirschke was permitted to plead to 140-year sentence in early 1990s during pendency of state post-conviction proceeding) [UK, L]

_Russell Boyd_ (Boyd was permitted to plead to term of years in late 1980s during pendency of state post-conviction proceeding) [UK, L]

_Burris v. State_, 558 N.E.2d 1067 (Ind. 1990) (death sentence overturned based on ineffective assistance of counsel; resentenced to death) [IAC, D]

_Frank Davis_ (death sentence vacated on November 10, 1993 by state trial court on joint motion by state and Davis premised on jury’s failure to hear and consider important mitigating evidence; these proceedings are described in a subsequent opinion reviewing the death sentence imposed on retrial, _see Davis v. State_, 675 N.E.2d 1097 (Ind. 1996)) [O, D]

*Games v. State*, 684 N.E.2d 466, on reh’g., 690 N.E.2d 211 (Ind. 1997) (sentence overturned because jury was permitted to rely on improper conviction as aggravating circumstance; resentenced to death) [O, D]

_James Harris_ (Harris was permitted to plead to 120-year term in late 1980s during pendency of state post-conviction proceeding) [UK, L]

_State v. Huffman_, 643 N.E.2d 899 (Ind. 1994) (conviction overturned because jury was instructed that defendant, not state, bore the burden of proof on crucial defensive issue; on retrial, Huffman pled guilty and was sentenced to 60 years (see _State v. Huffman_, 717 N.E.2d 571 (Ind. 1999))) [I, L]

_Phillip McCollum_ (during pendency of state post-conviction proceedings in early 1990s, state offered and McCollum accepted a plea to a term of years after evidence he presented in the post-conviction hearing showed that his trial attorney failed to investigate and inform the jury of his mental retardation) [IAC, L]

*State v. Moore*, 678 N.E.2d 1258 (Ind. 1997) (conviction and death sentence overturned by state trial court; on appeal, supreme court reinstates conviction but leaves reversal of death sentence intact; resentenced to death) [UK, D]

_Larry Potts_ (Potts was permitted to plead to 210-year sentence in early 1990s during pendency of state post-conviction proceeding) [UK, L]

*Schiro v. State*, 669 N.E.2d 1357 (Ind. 1996) (death sentence overturned and 60-year sentence imposed on successive state post-conviction petition, because trial judge improperly rejected jury’s recommendation of life sentence) [O, L]

_Smith v. State_, 547 N.E.2d 817 (Ind. 1990) (conviction overturned due to egregious ineffective assistance of counsel; on retrial, Smith was acquitted of all charges) [IAC, NG]

_Spranger v. State_, 650 N.E.2d 1117 (Ind. 1995) (death sentence overturned based on ineffective assistance of counsel; on retrial, Spranger was sentenced to 60-year term) [IAC, L]
Johnny Townsend (during pendency of state post-conviction proceedings in early 1990s, state permitted Townsend to plead out to 120-year term after he established Sixth Amendment error in the use against him of his codefendant’s confession despite Townsend’s inability to cross-examine the codefendant) [O, L]

Herbert Underwood (on April 21, 1995, trial court overturned capital conviction for unspecified reasons; on retrial, defendant was acquitted of capital murder but convicted of lesser (nonhomicide) offenses, see 722 N.E.2d 828, 830-31 (Ind. 2000)) [UK, NG]

*VanCleave v. State, 674 N.E.2d 1293 (Ind. 1996) (death sentence overturned based on ineffective assistance of counsel; on retrial, VanCleave was sentenced to 60-year term) [IAC, L]

pre-1996: 13
1996 and after: 4

Basis for Relief: IAC = 6; I = 1; O = 4; UK = 6
Result on Retrial: L = 10; NG = 2; D = 5
KENTUCKY: None
LOUISIANA

State v. Brooks, 661 So.2d 1333 (La. 1995) (death sentence overturned based on ineffective assistance of counsel at penalty phase; retrial pending) [IAC, RP]

State ex rel. Busby v. Butler, 538 So.2d 164 (La. 1987) (death sentence overturned based on ineffective assistance of counsel at penalty phase; resentenced to life) [IAC, L]

*State v. Cage, 667 So.2d 529 (La. 1996) (conviction and death sentence overturned based on misinstruction concerning requirement of proof beyond reasonable doubt; resentenced to life) [I, L]

*State v. Michael Graham (Union Parish, 3rd Jud. Dist. Ct., Div. A, No. 28734B, Mar. 2000) (after pending for 12 years in state trial court on extraordinary motion for new trial, conviction was overturned due to prosecutorial suppression of evidence; retrial pending) [PSE, RP]


State v. Lane Nelson (state conviction overturned; on retrial, lesser conviction and sentence were imposed by trial judge in mid-1980s) [UK, L]

pre-1996: 4
1996 and after: 2

Basis for Relief: IAC = 3; PSE = 1; I = 1; UK = 1
Result on Retrial: L = 5; RP = 1
MARYLAND

**Bowers v. State**, 578 A.2d 734 (Md. 1990) (conviction overturned based on variety of errors committed by Bower’s incompetent trial attorney—including in failing to show that forensic evidence found on the victim did not match Bowers, leaving a “substantial possibility” that the result of the trial would have been different had counsel done his job; lesser sentence imposed on retrial) [IAC, L]

**State v. Kirk Bruce** (Prince George’s Cnty. Cir. Ct. No. CT88-2226X, Apr. 1995) (conviction and death sentence overturned due to prosecutorial suppression of exculpatory evidence of innocence; on Jan. 22, 1996, state and Bruce stipulated to, and the trial court imposed, a life sentence) [PSE, L]

**State v. James Arthur Calhoun** (Montgomery Cnty. Cir. Ct. 1989) (death sentence overturned, due to instruction forbidding jurors to rely on mitigating factors that one or more of them believed warranted a sentence less than death unless all 12 jurors could agree that each such factor existed and was sufficiently mitigating; a properly instructed jury imposed a lesser sentence on retrial; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]

**State v. Colvin**, 548 A.2d 506 (Md. 1988) (death sentence overturned due to sentencer’s reliance in sentencing Colvin to death on juvenile infractions that do not qualify as criminal convictions under Maryland, hence cannot qualify as aggravating circumstances and because the trial improperly forbade individual jurors to rely on bases for mitigating sentence unless each such basis was agreed to by all 12 jurors; resentedenced to death) [O, D]

**State v. Vernon Lee Evans** (Worcester Cnty. Cir. Ct. Mar. 29, 1991) (death sentence overturned on same basis as in *Calhoun*; proceedings are described in a subsequent opinion reviewing the death sentence imposed on retrial, see *Evans v. State*, 637 A.2d 117 (Md. 1994)) [I, D]


**State v. Ian Henry** (Prince George’s Cnty. Cir. Ct. Oct. 24, 1994) (conviction overturned due to prosecutorial suppression of evidence of innocence; on Apr. 19, 1996, Henry pled guilty to a lesser offense; on May 31, 1996, Henry was resentenced to time served and released from custody) [PSE, L]

**State v. James H. Huffington** (Apr. 28 1992) (same as *Calhoun*; on retrial, state unilaterally withdrew its death notice (indicating its intention to seek the death penalty), and the trial judge imposed a life sentence; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]


*Perry v. State*, 741 A.2d 1162 Md. (Md. 1999) (conviction overturned due to counsel’s ineffective assistance in failing to make timely objection to patently inadmissible evidence that provided the crucial link between Perry and the offense; retrial pending) [IAC, RP]

**State v. Willie Reid** (Baltimore City Cir. Ct. 1988) (same as *Calhoun*; resentedenced to life; proceedings described in *The Report of the [Maryland] Governor’s Commission on the Death Penalty* 94-96 (Nov. 1993)) [I, L]
Trimble v. State, 582 A.2d 794 (Md. 1990) (death sentence overturned because the judge who imposed it upon Trimble’s waiver of a jury trial did not properly advise Trimble of the adverse consequences of waiving a jury trial; resentenced to life life) [O, L]

State v. Derrick Quentin White (Baltimore Cnty. Cir. Ct. 1988) (death sentence overturned by trial court, as described in subsequent opinion overturning the death sentence imposed on resentencing, State v. White, 589 A.2d 969 (Md. 1991)) [UK, D]

State v. Derrick Quentin White (Baltimore Cnty. Cir. Ct. 1992) (after death sentence had been imposed and overturned twice, White’s third death sentence was overturned time upon the state’s admission of error in the sentencing instructions; a life sentence was imposed by a properly instructed jury on June 9, 1992, see The Report of the [Maryland] Governor’s Commission on the Death Penalty 94-96 (Nov. 1993)) [I, L]

State v. Willie Reid (Baltimore City Cir. Ct. 1988) (same as Calhoun); resentenced to life sentence imposed on retrial; proceedings described in The Report of the [Maryland] Governor’s Commission on the Death Penalty 94-96 (Nov. 1993)) [I, L]

pre-1996: 14
1996 and after: 1

Basis for Relief: IAC = 2; PSE = 2; I = 8; O = 2; UK = 1
Result on Retrial: L = 11; D = 3; RP = 1
MISSISSIPPI [petitioner was not returned to death row after retrial, unless otherwise noted]

*Booker v. State, 699 So.2d 132 (Miss. 1997) (death sentence overturned because jury considered two improper aggravating circumstances) [O, L]

Davis v. State, 655 So.2d 864 (Miss. 1994) (death sentence overturned because jury relied on improperly defined aggravating circumstance) [I, L]

Gilliard v. State, 614 So.2d 370 (Miss. 1993) (same as Davis) [I, L]

Hill v. State, 659 So.2d 547 (Miss. 1994) (same as Davis) [I, L]

Irving v. State, 618 So.2d 58 (Miss. 1992) (death sentence overturned on second state post-conviction petition because jury relied on improperly defined aggravating circumstance) [I, L]

Johnson v. State, 547 So.2d 59 (Miss. 1989) (death sentence overturned because jury based it on invalid prior conviction; on remand from Johnson v. Mississippi, 486 U.S. 578 (1988); life sentence imposed on remand) [O, L]

Leatherwood v. State, 539 So.2d 1378 (Miss. 1989) (conviction overturned due to egregious ineffective assistance of counsel) [IAC, L]

Smith v. State, 648 So.2d 63 (Miss. 1994) (same as Davis) [I, L]

Stringer v. State, 638 So.2d 1285 (Miss. 1994) (same as Davis) [I, L]

Tokman v. State, 564 So.2d 1339 (Miss. 1990) (death sentence overturned because of ineffective assistance of counsel at sentencing phase) [IAC, L]

West v. State, 666 So.2d 767 (Miss. 1995) (same as Davis) [I, L]

Woodward v. State, 635 So.2d 805 (Miss. 1993) (same as Davis) [I, L]

pre-1996: 11
1996 and after: 1

Basis for Relief: IAC = 2; I = 8; O = 2
Result on Retrial: L = 11; D = 1
MISSOURI

*State v. Butler*, 951 S.W.2d 600 (Mo. 1997) (conviction and death sentence overturned based on ineffective assistance of counsel in failing to investigate and discover evidence that the victim was murdered by her nephew rather than by Butler and in failing to bring out substantial weaknesses in the prosecution’s case, either of which could have raised a reasonable doubt in the jurors’ minds; on retrial, Butler was convicted of a lesser (nonmurder) degree of homicide and given a 20-year term) [IAC, NG]

*State v. Dexter*, 954 S.W.2d 332 (Mo. 1997) (conviction overturned due to prosecutor’s repeated use against Dexter of his invocation of his right to silence; on retrial, the state dismissed the charges against Dexter and released him for lack of any evidence of guilt) [PM, NG]

*State v. Roderick Nunley* (Mo. S. Ct.) (sometime between Oct. 28, 1991 and Mar. 31, 1994, as described in a subsequent opinion in *State v. Nunley*, 923 S.W.2d 911, 916 (Mo. 1996), death sentence was vacated by state supreme court based on evidence that the trial judge who imposed it was intoxicated at the time; resentenced to death) [JB, D]

*State v. Phillips*, 940 S.W.2d 512 (Mo. 1997) (death sentence overturned based on exclusion of evidence shifting blame for part of offense to someone other than the defendant; resentenced to life) [O, L]

*State v. Ed Reuscher*, (Mo. 1995 or after) (unpublished opinion granting relief apparently based upon ineffective assistance of appellate counsel; resentenced to life) [IAC, L]

*State v. Rhodes*, 988 S.W.2d 521 (Mo. 1999) (death sentence overturned because of prosecutorial misconduct in closing argument at sentencing phase; retrial pending) [PM, RP]

*State v. Michael Taylor* (Mo. June 1993) (death sentence was vacated because of evidence that the trial judge who imposed it was intoxicated at the time, as described in subsequent opinion reviewing death sentence that was imposed on retrial, *State v. Taylor*, 929 S.W.2d 209, 215 (1996)) [JB, D]

*State v. Thompson*, 985 S.W.2d 779 (Mo. 1999) (death sentence overturned because state prejudicially relied on surprise aggravating evidence, denying Thompson a fair chance to rebut it; retrial pending) [O, RP]

*State v. Wells*, 804 S.W.2d 746 (Mo. 1991) (conviction overturned based on ineffective assistance of trial counsel in failing to uncover and present evidence that another man committed the offense; convicted of a lesser offense on retrial and sentenced to a term of years) [IAC, L]

pre-1996: 3
1996 and after: 6

Basis for Relief: IAC = 3; PM = 2; JB = 2; O = 2
Result on Retrial: L = 3; NG = 2; D = 3; RP = 2
MONTANA

*Lester Kills on Top v. State, 901 P.2d 1368 (Mont. 1995) (death sentence overturned due to state’s suppression of material evidence impeaching its key witness at sentencing; defendant was not returned to death row) [PSE, L]

*Vernon Kills on Top v. State, 928 P.2d 182 (Mont. 1997) (death sentence overturned as disproportionate to defendant’s minor participation in the killing; life sentence imposed) [O, L]

pre-1996: 1
1996 and after: 1

Basis for Relief: PSE =1; O = 1
Result on Retrial: L = 2
Reeves v. Nebraska, 498 U.S. 964 (1990) (on certiorari review of denial of state post-conviction petition, Court vacates death sentence that state supreme court had improperly affirmed despite having invalidated an aggravating circumstance on which the sentence was based; remanding for resentencing; see State v. Reeves, 604 N.W.2d 152, 161 (2000); resentenced to death) [O, D]

*State v. Reeves, 604 N.W.2d 152 (2000) (overturning death sentence that was reimposed following U.S. Supreme Court’s vacation of it, concluding that the reimposition of death violated Reeves’ right to a sentencing trial; proceedings pending) [O, RP]

Simants v. State, 277 N.W.2d 217 (Neb. 1979) (conviction overturned based on sheriff’s repeated course of ex parte contacts with jurors during course of trial; on retrial, petitioner was found not guilty by reason of insanity, see State v. Simants, 537 N.W.2d 346, 348 (1995)) [PM, NG]

pre-1996: 2
1996 and after: 1

Basis for Relief: PM = 1; O = 2
Result on Retrial: NG = 1; D= 1; RP = 1
NEVADA

*State v. Jason Browne* (Nev. S. Ct., No. 33769, Apr. 27, 2000) (death sentence overturned due to ineffective assistance at the penalty phase in failing to discovery and document petitioner’s mental disorder; retrial pending) [IAC, RP]

*State v. Vincent Pasquale* (Carson City Dist. Ct., No. 88-01304C-II, Jan. 19, 1993) (upon state’s confession to having committed “a nonspecified error . . . during the sentencing phase of the trial,” trial court vacates death sentence and imposes life sentence) [UK, L]

*Richard Lee Hardison v. State* (Nev. S. Ct., No. 24195, May 24, 1994 & July 22, 1994) (death sentence overturned due to ineffective assistance of counsel in failing to do any investigation in mitigation, thus leaving the jury unaware that the victim had previously stabbed, beaten and otherwise provoked Hardison and that Hardison was brain damaged and retarded; on retrial, Hardison was removed from death row) [IAC, L]

*Jimenez v. State*, 918 P.2d 687 (Nev. 1996) (conviction overturned due to state’s suppression of evidence implicating other suspects and impeaching key informant witness against Jimenez; on retrial, Jimenez pled to noncapital murder and was released from prison the next year) [PSE, L]


*Roberto Hernandez Miranda v. Warden*, (Nev. S. Ct., No. 17497, Apr. 28, 1988) (judgment overturned due to egregious ineffective assistance of counsel based on counsel’s failure to interview 10 witnesses named by his client who were able to exonerate Miranda and identify the actual killer; on retrial, Miranda was released as innocent) [IAC, NG]

*Olausen v. State*, 771 P.2d 583 (Nev. 1989) (death sentence overturned due to counsel’s negligent failure to present a large body of available mitigating evidence and his own damaging remarks to the sentencing panel; Olausen was not returned to death row) [PSE, L]

*State v. Danny Alfred Padilla* (Clark Cnty. Dist. Ct., No. C70597-IV-C, July 12, 1996) (state confesses that error occurred at Padilla’s trial and permits him to plead guilty to second-degree murder) [UK, L]

*Dewayne Derek Stevens v. State* (Nev. S. Ct., No. 24138, July 8, 1994) (conviction overturned due to trial court’s failure to advise Stevens properly about the pitfalls of self-representation at a capital trial and failure to determine whether self-representation was permitted under the circumstances; on remand, Stevens pled to a lesser sentence) [IAC, L]

pre-1996: 5
1996 and after: 4

Basis for Relief: IAC = 4; PSE = 3; UK = 2
Result on Retrial: L = 6; NG = 2; RP = 1
State v. Bishop, No. 93 CRS 20410-20423 (Guilford Cnty., Jan. 10, 2000) (death sentence overturned because prosecution concealed material, exculpatory evidence and its discovery of a witness who placed Bishop elsewhere at the time of the crime; retrial pending) [PSE, RP]

State v. Thomas Jack Brown, No. 65A85-2 (Robeson Cnty., June 30, 1997) (conviction overturned by trial court due to ineffective assistance of counsel; state offered and Brown accepted a plea to second-degree murder and was sentenced to life) [IAC, L]

State v. Gladden, No. 82 CRS 18706 (Onslow Cnty., Dec. 7, 1988) (death sentence overturned by trial court due to ineffective assistance of counsel at the penalty phase; Gladden was resentenced to life) [IAC, L]

State v. Alton Green, No. 85 CRS 11245 (Wake Cnty., Oct. 29, 1993) (death sentence overturned by trial court because jury was misinstructed on proper consideration of mitigating evidence; Green was resentenced to life) [I, L]

State v. Holden, No. 85 CRS 1559 (Duplin Cnty., Dec. 7, 1990) (death sentence overturned by trial court because jury was misinstructed on proper consideration of mitigating evidence) [I, D]

State v. McNeil, No. 83 CRS 25605 (Wake Cnty., Aug. 26, 1993) (conviction overturned by trial court due to ineffective assistance of counsel and Harbison error; resentenced to death) [IAC, D]

State v. Munsey, No. 93 CRS 4078 (Wilkes Cnty., May 14, 1999) (conviction overturned because prosecution concealed material, exculpatory evidence, another man confessed to the offense, and a key witness against Munsey recanted and admitted giving false testimony; Munsey died while awaiting retrial) [PSE, DW]

State v. Oliver, No. 78 CRS 25575 (Robeson Cnty., Apr. 4, 1994) (death sentence overturned by trial court because prosecution suppressed exculpatory evidence; Oliver was not returned to death row) [PSE, L]

State v. Robbins, No. 82 CRS 13883 (Durham Cnty., Feb. 1, 1993) (conviction overturned by trial court due to ineffective assistance of counsel; Robbins was not returned to death row) [IAC, L]

State v. Roper, No. 87 CRS 4488 (Burke Cnty., August 29, 1995) (death sentence overturned by trial court due to ineffective assistance of counsel at the penalty phase; resentenced to death) [IAC, D]

State v. Spruill, No. 84 CRS 1423 (Northampton Cnty., Feb. 21, 1992) (conviction overturned by trial court due to ineffective assistance of counsel and Harbison error; resentenced to death) [IAC, D]

State v. Womble, No. 93 CRS 1992-1993 (Columbus Cnty., July 22, 1998) (conviction overturned by trial court because prosecution concealed material, exculpatory evidence; on retrial, Womble pled to second-degree murder and received a life sentence) [PSE, L]

State v. Zuniga, 444 S.E.2d 443 (No. Car. 1994) (death sentence overturned by state supreme court because jury was misinstructed on proper consideration of mitigating evidence; resentenced to death) [I, D]

pre-1996: 9
1996 and after: 4
Basis for Relief: IAC = 6; PSE = 4; I = 3
Result on Retrial: L = 6; D = 5; RP = 1; DW = 1
OKLAHOMA

Green v. State, 881 P.2d 751 (Okl. Cr. App. 1994) (death sentence overturned because jury instructions invited jury to rely upon improperly vague aggravating circumstance; resentenced to life) [I, L]

State v. Munson, 886 P.2d 999 (Okl. Cr. App. 1994) (conviction overturned because prosecution deliberately withheld 165 photographs and more than 300 pages of reports, most of it suggesting that Munson was innocent; on retrial, Munson was acquitted, see Randall Coyne, Abe Munson’s Near-Death Experience, Okla. Observer, Apr. 25, 1995, at 9) [PSE, NG]

pre-1996: 2

Basis for Relief: PSE = 1; I = 1
Result on Retrial: L = 1; NG = 1


*Commonwealth v. DeHart*, 650 A.2d 38 (Pa. 1994) (death sentence overturned due to ineffective assistance of counsel; life sentence imposed on retrial) [IAC; L]

*Commonwealth v. Morales*, 701 A.2d 516 (Pa. 1997) (death sentence overturned on successive state post-conviction petition due to improper argument by the prosecutor; life sentence imposed on retrial) [PM, L]

*Commonwealth v. Willard Moran* (Phila. Cnty. Com. Pl. Nos. 3091 & 3092, 1999) (death overturned and Moran reportedly was offered and accepted life sentence in return for ending proceedings) [UK, L]


pre-1996: 1
post-1996: 7

Basis for Relief: IAC = 1; PM = 1; UK = 6
Result on Retrial: L = 5; RP = 3
SOUTH CAROLINA

Butler v. State, 397 S.E.2d 87 (S.C. 1990) (convictions and death sentence vacated on state habeas within the original jurisdiction of the South Carolina Supreme Court because the trial court coerced Butler, who was mentally retarded, into testifying at trial against his will and in violation of his privilege against self-incrimination; resentenced to life) [O, L]


Chaffee v. State, 362 S.E.2d 875 (S.C. 1987) (death sentence vacated due to unconstitutional exclusion of mitigating evidence at trial; resentenced to life) [O, L]

Ferrell v. State, 362 S.E.2d 875 (S.C. 1987) (death sentence vacated due to unconstitutional exclusion of mitigating evidence at trial; resentenced to life) [O, L]


*Joseph Hudgins v. Moore, 1999 WL 1114701 (S.C. Dec. 6, 1999) (conviction and death sentence vacated due to ineffective assistance of counsel in permitting prosecutor to pursue patently inadmissible and prejudicial line of inquiry while cross-examining Hudgins; retrial pending) [IAC, RP]

Alvin Owens (murder conviction and death sentence vacated in unpublished order in 1991 or before, which is discussed in subsequent opinion (reviewing life sentence imposed follow resentencing), in Owens v. State, 503 S.E.2d 462 (S.C. 1998)) [UK, L]


Andy Lavern Smith (death sentence vacated due to unconstitutional exclusion of mitigating evidence at trial, as discussed in subsequent opinion (reviewing death sentence imposed following resentencing) in State v. Smith, 381 S.E.2d 724 (S.C. 1989)) [O, L]

State v. Singleton, 437 S.E.2d 53 (S.C. 1993) (execution of death sentence forbidden due to finding that petitioner was incompetent to be executed) [O, L]


*State v. Spann, 513 S.E.2d 98 (S.C. 1999) (after direct appeal and first state post-conviction proceeding and in midst of federal habeas corpus proceeding, conviction overturned on extraordinary motion for new trial based on discovery of
evidence appearing to exonerate petitioner of offense; retrial pending) [O, RP]

Thompson v. Aiken, 315 S.E.2d 110 (S.C. 1984) (death sentence vacated due to prosecutorial misconduct during closing argument; resentenced to life) [PM, L]

Truesdale v. Aiken, 480 U.S. 527 (1987) (death sentence overturned because defendant was prevented from making argument in mitigation to jury based on his good record in prison; resentenced to death, see State v. Truesdale, 393 S.E.2d 198 (S.C. 1990)) [O, D]


Yates v. Evatt, 500 U.S. 391 (1991) (conviction overturned because trial court prejudicially instructed jury in manner that shifted burden of proof to the defendant; Yates was not returned to death row) [I, L]

pre-1996: 10
1996 and after: 8

Basis for Relief: IAC = 2; PM = 1; I = 1; O = 7; UK = 7
Result on Retrial: L = 10; D = 1; RP = 7
Adkins v. State, 911 S.W.2d 334 (Tenn. Crim. App. 1994) (death sentence overturned due to counsel’s failure to investigate or to use information regarding Adkin’s psychiatric and psychological condition and abuse as a child, thus leaving jury with little choice but to impose a death sentence; resentenced to life) [IAC, L]


Bobo v. State (Shelby Cnty. Crim. Ct.) (trial court overturned death sentence due to ineffective assistance of counsel in failing to investigate and present presenting evidence of Bobo’s mental disturbance; resentenced to life) [UK, L]


Campbell v. State, 1993 WL 122057 (Tenn. Crim. App. Apr. 21, 1993) (death sentence overturned because trial judge instructed sentencing jury to rely in support of aggravating-circumstance findings on a variety of inadmissible evidence; Campbell was not returned to death row) [I, L]


Cooper v. State, 847 S.W.2d 521 (Tenn. Crim. App. 1992) (death sentence overturned due to defense counsel's materially prejudicial failure to interview mental health experts who had evaluated defendant prior to trial and who were aware of substantial mitigating evidence; Cooper was not returned to death row) [IAC, L]

*Goad v. State, 938 S.W.2d 363 (Tenn. 1996) (death sentence overturned due to trial lawyers’ prejudicially deficient failure to investigate and present evidence demonstrating Goad’s affliction with post-traumatic stress syndrome; retrial pending) [IAC, RP]

Hartman v. State, 896 S.W.2d 94 (Tenn. 1995) (death sentence overturned due to sentencing jury’s prejudicial reliance on unconstitutional aggravating circumstance; resentenced to death) [O, D]

*Randy Hurley v. State (Cocke Cnty. Crim. Ct.) (death sentence overturned by trial court in mid- to late 1990s; resentenced to life) [UK, L]

*Erskine Leroy Johnson v. State, 1999 WL 608861 (Tenn. Crim. App. 1999) (death sentence overturned due to state’s suppression of evidence that Johnson did not commit offense that jury relied on as aggravating circumstance in imposing death sentence, and because of state’s and jury’s reliance on second, aggravating circumstance which state conceded was invalid; review pending) [O, RP]


Michael Matson v. State (Hamilton Cnty. Crim. Ct.) (death sentence overturned by trial court in early 1990s on successive state post-conviction petition due to sentencing jury’s reliance on unconstitutional aggravating circumstance; resentsented to life) [O, L]


*David Poe v. State (Montgomery Cnty. Crim. Ct.) (death sentence overturned by trial court in late 1990s; retrial pending) [UK, RP]


*Sylvester Smith v. State, 1999 WL 899362 (Tenn. Crim. App. Dec. 28, 1998) (conviction and death sentence overturned due to “the plethora and gravity of counsel’s deficiencies,” which were “glaring . . . throughout all phases of this trial” and “rendered the entire proceeding fundamentally unfair”; resentsented to life) [IAC, L]

Sparks v. State, 1993 WL 151324 (Tenn. May 10, 1993) (death sentence overturned because sentencer relied upon invalid aggravating factor and on evidence obtained in violation of Sparks’ post-arraignment right to consult with assigned counsel before being questioned by another inmate who was secretly acting as a government agent; resentsented to life) [PM, L]


Teague v. State, 772 S.W.2d 915 (Tenn. 1989) (death sentence overturned due to sentencer’s reliance on unconstitutional conviction as an aggravating circumstance; resentsented to life) [O, L]

Homer Teel v. State (Marion Cnty. Crim. Ct.) (trial court granted relief in early 1990s; direct appeal decision is in State v. Teel, 793 S.W.2d 236 (Tenn. 1990); Teel was not returned to death row). [UK, L]

*Wilcoxson v. State, 1999 WL 826035 (Tenn. Oct. 18, 1999) (death overturned based on state’s admission that Wilcoxson’s trial representation was so prejudicially below par as to require resentencing; retrial pending) [IAC, RP]

pre-1996: 13
1996 and after: 12

Basis for Relief: IAC = 12; PM = 1; I = 1; O = 7; UK = 4

App. C-42
Result on Retrial: L = 18; D = 1; RP = 6
TEXAS

Ex Parte Randall Dale Adams, 768 S.W.2d 281 (Tex. Crim. App. 1989) (conviction overturned and prisoner released as innocent due to prosecution’s (1) intentional failure to disclose crime witness’ prior inconsistent statement, which was diametrically opposed to her material trial testimony; (2) failure to correct witness’s perjurious testimony that she had identified defendant in a lineup; and (3) failure to disclose misidentification and improper coaching of witness by police) [PSE, NG]

Ex Parte Banda (Tex. Crim. App. Writ No. 21,327-02, Oct. 21, 1992) (overturning conviction and sentence due to ineffective assistance of appellate counsel; resentedenced to death) [IAC, D]

Ex Parte Bell (Tex. Crim. App. No. 70,946, Nov. 6, 1991) (death sentence overturned due to improper instruction forbidding jury to consider defendant’s mental retardation as a mitigating circumstance; unpublished opinion reported as appendix to dissenting opinion in Ex Parte Tennard, 960 S.W.2d 57 (1997); resentedenced to death) [I, D]

Ex Parte Brandley, 781 S.W.2d 886 (Tex. Crim. App. 1989) (conviction overturned because that prosecution suppressed evidence placing other suspects at scene of crime near time the crime was perpetrated, its suggestive conduct of investigation so as to create false testimony, and it failure to resolve conflicts in physical evidence; Brandley was released in lieu of retrial) [PSE, NG]

Ex Parte Bravo, 702 S.W.2d 189 (Tex. Crim. App. 1982) (death sentence overturned because the trial court excluded impartial jurors due to their doubts about the death penalty; 99-year sentenced imposed on retrial see <www.tdcj.state.tx.us/stat/permanentout.htm>) [JB, L]

Ex Parte Chambers, 688 S.W.2d 483 (Tex. Crim. App. 1984) (death sentence overturned because state psychiatrist interviewed petitioner without informing him that his statements could be used as a basis for sentencing him to die; resentedenced to death) [O, D]

Ex Parte Demouchette, 633 S.W.2d 879 (Tex. Crim. App. 1982) (same) [O, D]

Ex Parte Duffy, 607 S.W.2d 507 (Tex. Crim. App. 1980) (conviction and death sentence overturned due to ineffective assistance of counsel; resentedenced to life, see <www.tdcj.state.tx.us/stat/permanentout.htm>) [IAC, L]


Ex Parte Goodman, 816 S.W.2d 383 (Tex. Crim. App. 1991) (death sentence overturned due to improper instruction forbidding jury to consider defendant’s mental retardation as a mitigating circumstance; resentedenced to life) [I, L]

Ex Parte Hughes, 728 S.W.2d 372 (Tex. Crim. App. 1987) (death sentence overturned because trial court excluded impartial jurors due to their doubts about the death penalty; resentedenced to death) [JB, D]

Ex Parte Jordan, 758 S.W.2d 250 (Tex. Crim. App. 1988) (death sentence overturned because Jordan was incompetent to be executed) [O, L]

Ex Parte McCormick, 645 S.W.2d 801 (Tex. Crim. App. 1983) (conviction overturned due to capital attorney’s conflict
of interest in representing two criminal defendant’s with conflicting defenses; McCormick was resentenced to life and has since been paroled) [IAC, L]

Ex Parte McGee, 817 S.W.2d 77 (Tex. Crim. App. 1991) (death sentence overturned due to improper instruction forbidding jury to consider defendant’s mental retardation as a mitigating circumstance; resentenced to life [I, L]

Ex Parte McKay, 819 S.W.2d 478 (Tex. Crim. App. 1991) (death sentence overturned due to trial court's improper limitation of counsel’s ability to question prospective jurors on whether they would feel compelled to condemn the defendant in the event that they convicted him; resentenced to life) [JB, L]

Ex Parte McMahon, 645 S.W.2d 801 (Tex. Crim. App. 1983) (conviction overturned due to capital attorney’s conflict of interest in representing two criminal defendant’s with conflicting defenses; McMahon was resentenced to life and has been released on parole) [IAC, L]

Ex Parte Mitchell, 853 S.W.2d 1 (Tex. Crim. App. 1993) (conviction overturned due to prosecutorial suppression of exculpatory evidence showing that victim was alive after last time when Mitchell could have killed him; lengthy but inconclusive proceedings on remand described in Ex parte Mitchell, 977 S.W.2d 575 (Tex. Crim. App. 1998)) [PSE; ?]

Ex Parte Modden (Tex. Crim. App. Case No. 71,312, Feb. 12, 1992) (death sentence overturned due to improper jury instructions forbidding jury to consider Modden’s mental retardation as a mitigating circumstance; resentenced to death) [I, D]

Ex Parte Purtell (Tex. Crim. App. Case No. 71,515, Oct. 12, 1994) (death sentence overturned because state psychiatrist interviewed petitioner without informing him that his statements could be used as a basis for sentencing him to die; resentenced to life) [O, L]

Ex parte Terry Nash Sterling (Tex. Crim. App. Apr. 29, 1992) (death sentence overturned due to improper instruction forbidding jury to consider defendant’s mental retardation and brain damage as a mitigating circumstance, as reported in Austin American-Statesman, Apr. 30, 1992, at B12, 1992 WL 4716376; resentenced to life) [I, L]

Ex Parte Philip Tompkins (230th Judicial District Court of Harris County, Texas Cause No. 329,004A) (on July 7, 1990, the Texas governor commuted Tompkins’ death sentence at the request of the D.A., after Tompkins’ volunteer state post-conviction lawyers developed evidence that the prosecution's star witness at the penalty phase—purportedly a clinical psychologist who had “examined” and “treated” Phil during a prior stint in prison—was not a clinical psychologist at all but an imposter whose only post-high-school educational credential was a degree in fine arts) [PSE, L]

Ex Parte Williams, 833 S.W.2d 150 (Tex. Crim. App. 1992) (death sentence overturned due to improper instruction forbidding jury to consider defendant’s mental retardation as a mitigating circumstance; resentenced to life) [I, L]

*Ex Parte Bobby Joe Wills (Tex. Crim. App. Writ No. 72,915, May 13, 1998) (death sentence overturned due to improper instruction forbidding jury to consider defendant’s mental retardation as a mitigating circumstance, as reported in Austin American-Statesman, May 18, 1998, at A6, 1998 WL 3610947; resentenced to life) [I, L]

pre-1996: 22
1996 and after: 1

Basis for Relief: IAC = 4; PSE = 4; I = 7; JB = 3, O = 5
Result on Retrial: L = 15; NG = 2, D = 6

App. C-45
**UTAH**

*Codianna v. Morris*, 660 P.2d 1101, 1103 (Utah 1983) (in opinion denying habeas corpus relief from capital conviction, court notes trial court’s 1980 grant of habeas corpus relief from capital sentence for Codianna and his two codefendants, Craig Marvell and Irvin Dunsdon, based on prosecutorial suppression of mitigating evidence; all three were resentenced to life in prison) [PSE, L]

*Irvin Dunsdon v. Morris* (see Codianna, supra) [PSE, L]

*Craig Marvell v. Morris* (see Codianna, supra) [PSE, L]

pre-1996: 3

Basis for Relief: PSE = 3
Result on Retrial: L = 3
VIRGINIA

Wilbert Evans (death sentence overturned by trial court after state “confessed error” based on its reliance to secure a death sentence on “seriously misleading” or “otherwise defective” prior convictions (reversal noted in decision reviewing death sentence imposed on retrial Evans v. Commonwealth, 323 S.E.2d 114 (Va. 1984))) [O, D]

Joseph Giarratano (in 1991, Virginia governor accepted prisoner’s request that he impose a quasi-judicial judgment by way of “conditional pardon” (setting aside the conviction on condition that the prisoner waive double jeopardy and submit to reprosecution) to enable the prisoner to secure a new trial that several judicial doctrines of issue-preclusion had barred him from getting in either the Virginia state courts or the federal courts; on retrial, Giarratano was sentenced to life; see Greg Schneider, 2 Years After Escaping Execution, Giarratano’s Stature Still Grows, The Virginian-Pilot & Ledger Star, Sept. 5, 1993, at B1) [UK, L]

*Chauncey Jackson v. Warden, 2000 WL 462516 (Va. April 21, 2000) (conviction overturned because court that convicted defendant did not have jurisdiction over him; retrial pending) [O, RP]

Earl Washington (in 1992, Virginia governor commuted capital conviction and death sentence to life imprisonment based on DNA evidence showing that Washington, who was retarded, had been compelled to confessed to a rape-murder that he did not commit; see Robert Perske, Unequal Justice? 54-56 (1991); Joe Jackson & June Arney, Sentenced To Die Without Fair Trials, Virginian-Pilot & Ledger Star, June 26, 1994, at A1) [PSE, L]

pre-1996: 3
1996 and after: 1

Basis for Relief: PSE =1; O = 2; UK = 1
Result on Retrial: L = 2; D = 1; RP = 1
WASHINGTON [No available information]
WYOMING

Engberg v. Meyer, 820 P.2d 70 (Wyo. 1991) (death sentence reversed due to improper bootstrapping of accompanying felony that was used to elevate offense from second- to first-degree murder as aggravating circumstance sufficient to elevate first-degree murder to capital offense; life sentence imposed on retrial, see Engberg v. State, 874 P.2d 890 (Wyo. 1994)) [O, L]

pre-1996: 1

Basis for Relief: O = 1
Result on Retrial: L = 1