

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 13, 2014

Lyle W. Cayce
Clerk

No. 12-70022

JESSIE HOFFMAN,

Petitioner - Appellant

v.

BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 5/12/14, 5 Cir., 752 F.3d 430)

Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

We address two arguments that Hoffman presents to us for panel rehearing. First, Hoffman points out that Dr. Elaine Salzer *did* compile an expert report which was in defense counsel's possession. Second, Hoffman

contends that our opinion assumes that defense counsel relied on the findings of the court-appointed competency experts when they decided to cease efforts to further investigate his background and mental health. Hoffman argues that these facts ought to change our assessment of the state court's disposition of the *Strickland* claim under 28 U.S.C. § 2254(d).

We correct our opinion to the extent that it implies Dr. Salzer did not create a written report. However, as we noted, Dr. Salzer did not compile a psychosocial history. Furthermore, lead counsel William Alford did testify during a post-conviction deposition that he specifically asked Dr. Salzer not to prepare a written report. Next, we need not disagree with Hoffman's contention that defense counsel relied only on their own expert.

Having reviewed the record in its entirety, however, we continue to hold that the state court's adjudication cannot be faulted. The state court decided that there was no deficient performance, and thus no *Strickland* error. Under § 2254(d), this decision was neither contrary to nor an unreasonable application of clearly established federal law as determined by the Supreme Court.

The petitions for rehearing and rehearing en banc are DENIED.