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The Dance of Death or (Almost) No One Here Gets out Alive: The Fourth Circuit's Capital Punishment Jurisprudence

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THE DANCE OF DEATH[1] OR (ALMOST) "NO ONE HERE GETS OUT ALIVE"[2]: THE FOURTH CIRCUIT'S CAPITAL PUNISHMENT JURISPRUDENCE

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"NO ONE HERE GETS OUT ALIVE"

Jim Morrison – The Doors

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1. The Dance of Death was a genre of morality play and dates back to the fourteenth century. Charles Herbermann & George Williamson, *Dance of Death*, *in* THE CATHOLIC ENCYCLOPEDIA, http://newadvent.org/cathen/04617a.htm (last visited Mar. 12, 2010). Designed in response to the many plagues and epidemics that left thousands, if not millions, dead, OLE J. BENEDICTOW, THE BLACK DEATH, 1346–1353, at 380–84 (2004), the Dance of Death was intended to convey to audiences that all persons must die and therefore it was important to begin preparing immediately to appear before God the Judge. *See* Herbermann & Williamson, *supra*.

2. THE DOORS, *Five to One*, *on* THE BEST OF THE DOORS (Elektra/Asylum Records 1985).

* Professor of Law, Cornell Law School and Director, Cornell Death Penalty Project. I would like to thank the *South Carolina Law Review* for inviting me to participate in the Symposium and for its generous hospitality during the Symposium. I would also like to thank the *Law Review* for its assistance in the editing of this Essay. I would also like to thank Damoun Delaviz and Sarah Rosenberg for their research assistance, and my colleagues, Sheri Johnson, Keir Weyble, and Emily Paavola for reviewing drafts of the Symposium lecture and this Essay.

I. INTRODUCTION

I have been asked to discuss the Fourth Circuit's death-penalty jurisprudence. Before tackling my assignment, let me begin with a story that will serve as a disclaimer of sorts when I reach the substantive parts of this Essay.

I moved back to South Carolina in 1985. After graduating from Myrtle Beach High School in 1973, I matriculated at the University of North Carolina at Chapel Hill. After graduating from college, Yale Divinity School, and Yale Law School, I accepted a clerkship with the Honorable Thomas A. Clark, a circuit court judge on the United States Court of Appeals for the Eleventh Circuit. Clerking for Judge Clark was a wonderful job. Most judicial clerks love the judge for whom they clerk, and I was no exception. Additionally, 1984 to 1985 was an especially exciting year to be an Eleventh Circuit clerk because Judge Clark was assigned to the three-judge panel or was a member of the en banc court that issued opinions in *McCleskey v. Kemp*,[3] *Ford v. Wainwright*,[4] and *Hitchcock v. Wainwright*,[5] all three of which were ultimately heard by the Supreme Court. It was also a very busy year because the execution machines in Florida and Georgia were just entering high gear after experiencing a few early bumps and hiccups that resulted from the Supreme Court's decision in *Gregg v. Georgia*,[6] which "ushered in the 'modern' era of capital punishment."[7] As Judge Clark's primary death and habeas clerk, I spent almost all of my time working on capital habeas matters. The hours were long, and there were many late nights spent poring over transcripts and briefs, but for a young lawyer it was a strange combination of exhaustion, thrill, and fright. And so, when I came back to South Carolina and joined a small firm in Charleston, I thought I knew a thing or two about the death penalty and habeas corpus.

The truth is that I did not know as much as I thought I did, a fact which many who know me will not find surprising. But, I did know more than most lawyers in the state at that time because only a few capital cases had even entered federal court by 1985,[8] and thus my one-year-judicial-clerk "crash" course in capital habeas litigation made me—by default—something of an expert. It is like the old saying, "In the land of the blind, the one eyed man is King." So, when a lawyer I met in Charleston, Coming Ball Gibbs, asked me if I would be willing to help with a capital habeas appeal pending in the Fourth

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3. 753 F.2d 877 (11th Cir. 1985) (en banc), *aff'd*, 481 U.S. 279 (1987).
4. 752 F.2d 526 (11th Cir. 1985), *rev'd*, 477 U.S. 399 (1986).
5. 770 F.2d 1514 (11th Cir. 1985) (en banc), *rev'd sub nom.* Hitchcock v. Dugger, 481 U.S. 393 (1987).
6. 428 U.S. 153 (1976).
7. John H. Blume, *Killing the Willing: "Volunteers," Suicide and Competency*, 103 MICH. L. REV. 939, 939 (2005). For a more detailed discussion of these events, see John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the "Modern" Era of Capital Punishment in South Carolina*, 54 S.C. L. REV. 285, 287–91 (2002).
8. *See, e.g.*, Shaw v. Martin, 733 F.2d 304, 306 (4th Cir. 1984) (affirming district court's denial of habeas corpus relief in favor of South Carolina authorities).

Circuit, I enthusiastically signed on. The client was William Gibbs Hyman, and the crime involved an ill-conceived robbery resulting in a drunken shootout and one man dead.[9] Mr. Hyman, or Willie as we called him, was nearing the end of his appeals, having been unsuccessful in the South Carolina state courts and, until then, in the federal courts as well.[10]

To make a long story somewhat short, after the Fourth Circuit originally granted sentencing relief but denied guilt-phase relief,[11] both sides sought certiorari review by the Supreme Court.[12] The Court granted the petitions and remanded the case back to the Fourth Circuit for additional briefing and argument.[13] On remand, the panel, in an opinion authored by Judge Butzner, granted the writ of habeas corpus, finding *Sandstrom* error.[14] Now for those readers too young to know what a *Sandstrom* error is, or for the civil lawyers who have not already stopped reading and do not really care what a *Sandstrom* error is, I will just briefly say that it involves a burden-shifting instruction on an element of the offense that in *Sandstrom v. Montana*,[15] the Supreme Court held violated the Due Process Clause because it relieved the State of its obligation to prove the defendant guilty of every element of the crime beyond a reasonable doubt.[16] The Fourth Circuit panel held that South Carolina's instruction that "[m]alice is presumed or implied from the use of a deadly weapon" violated due process.[17] So, the "Great Writ" issued on Willie Hyman's behalf, and he was awarded a new trial.[18] Just to finish the story, especially because this is one of the few capital cases entering federal habeas in the Fourth Circuit that has a happy ending, at least from the death-sentenced inmate's point of view, a favorable plea bargain was negotiated, and after serving approximately another decade in prison, Mr. Hyman was granted parole. The last I heard, he was working in the community and doing well.

And, I remember thinking, "That was relatively easy; capital habeas here won't be so difficult." That was in 1987. Little did I know that it would be another fifteen years before I won another case in the Fourth Circuit (at least one that survived en banc review) or that my second victory, a Virginia case called *Williams v. True*,[19] would make me, by a factor of 100%, the most successful capital habeas attorney in Fourth Circuit history.

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9. Hyman v. Aiken, 777 F.2d 938, 939 (4th Cir. 1985), *vacated*, 478 U.S. 1016 (1986).
10. *See* Hyman v. Aiken, 606 F. Supp. 1046 (D.S.C. 1985), *rev'd*, 824 F.2d 1405 (4th Cir. 1987); State v. Hyman, 276 S.C. 559, 281 S.E.2d 209 (1981).
11. 777 F.2d at 940–41.
12. 478 U.S. at 1016.
13. *Id.*
14. 824 F.2d at 1409, 1417 (citing Sandstrom v. Montana, 442 U.S. 510, 523–24 (1979)).
15. 442 U.S. 510 (1979).
16. *Id.* at 524.
17. 824 F.2d at 1407, 1409 (internal quotation marks omitted).
18. *Id.* at 1417.
19. 39 F. App'x 830 (4th Cir. 2002).

So, my interest in the Fourth Circuit's death-penalty jurisprudence is both academic, as I have continued to study and write about the death penalty and habeas corpus since I joined the faculty at Cornell in 1997, and experiential, as I have litigated, and for the most part lost, a number of capital habeas cases in the Fourth Circuit over the last twenty-four years.[20] So, in case people reading this Essay are asking whether there might be at least a bit of "sour grapes" involved in my thinking about the topic, let me assure them that undoubtedly it is at least partially the case.

II. THE FOURTH CIRCUIT BY THE NUMBERS

Because much of my academic work is empirical in nature,[21] let me begin with the "numbers." In the modern era of capital punishment—the era that begins with the United States Supreme Court's 1976 decision in *Gregg v. Georgia*—there have been 276 total dispositions by the Fourth Circuit in capital cases.[22] In 211 cases, the court affirmed the district court's decisions denying or dismissing the writ of habeas corpus.[23] In 6 cases, the court affirmed the district court decision granting habeas relief to the death-sentenced inmate.[24] In 27 cases, the court reversed the district court decision granting the writ of habeas corpus, and in 8 cases the court reversed the district court decision denying the writ.[25] The en banc court has reversed grants of habeas relief by the district court or panel on 8 occasions, and in 1 instance, it has reversed the denial of the writ of

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20. I was lead counsel or co-counsel for the capital habeas petitioner in the following unsuccessful cases: *Gardner v. Ozmint*, 511 F.3d 420 (4th Cir. 2007); *Wilson v. Ozmint*, 352 F.3d 847 (4th Cir. 2003), *modified*, 357 F.3d 461 (4th Cir. 2004); *Drayton v. Moore*, 168 F.3d 481 (4th Cir. 1999); *Johnson v. Moore*, 164 F.3d 624 (4th Cir. 1998); *Truesdale v. Moore*, 142 F.3d 749 (4th Cir. 1998); *Atkins v. Moore*, 139 F.3d 887 (4th Cir. 1998); *Smith v. Moore*, 137 F.3d 808 (4th Cir. 1998); *Gilbert v. Moore*, 134 F.3d 642 (4th Cir. 1998); *Plath v. Moore*, 130 F.3d 595 (4th Cir. 1997); *Matthews v. Evatt*, 105 F.3d 907 (4th Cir. 1997); *Middleton v. Evatt*, 77 F.3d 469 (4th Cir. 1996); *Spann v. Martin*, 963 F.2d 663 (4th Cir. 1992); *Gaskins v. McKellar*, 916 F.2d 941 (4th Cir. 1990); *Woomer v. Aiken*, 905 F.2d 1533 (4th Cir. 1990); and *Roach v. Aiken*, 781 F.2d 379 (4th Cir. 1986).

21. *See, e.g.*, John H. Blume et al., *An Empirical Look at* Atkins v. Virginia *and Its Application in Capital Cases*, 76 TENN. L. REV. 625 (2009) (discussing empirical data on mental retardation claims made by capital-punishment defendants); John H. Blume, *The Dilemma of the Criminal Defendant with a Prior Record—Lessons from the Wrongfully Convicted*, 5 J. EMPIRICAL LEGAL STUD. 477 (2008) (discussing empirical data on testimony by innocent defendants); John Blume et al., *Explaining Death Row's Population and Racial Composition*, 1 J. EMPIRICAL LEGAL STUD. 165 (2004) [hereinafter Blume et al., *Explaining Death Row's Population and Racial Composition*] (using empirical data on murder demographics to explain death row demographics); John Blume & Theodore Eisenberg, *Judicial Politics, Death Penalty Appeals, and Case Selection: An Empirical Study*, 72 S. CAL. L. REV. 465, 470 (1999) (using empirical data to explain the relationship "among judicial elections, states' death-obtaining rates, and judicial review of capital cases").

22. *See infra* Appendix A.

23. *See id.*

24. *See id.*

25. *See id.*

habeas corpus to a death-sentenced inmate.[26] A table capturing these findings is set forth below:

FIGURE 1

276	211	6	8	27	8	1	15

The most significant thing, in my view, that can be gleaned from these numbers is the very low success rate that death-sentenced inmates have in capital habeas cases in the Fourth Circuit. In the thirty-three years that the new and supposedly improved death penalty has been in effect, capital habeas petitioners in the Fourth Circuit have prevailed in only about 6.2% of the cases.[27] Given that the overall success rate of death-sentenced inmates in federal habeas corpus cases in all circuits over the same time period is closer to 40%,[28] there is a significant disparity in outcomes. Furthermore, the 6.2% success rate figure includes procedural wins—instances where the petitioner "wins" the right to an evidentiary hearing. If one considers just cases where the writ is "granted"—cases where the capital habeas petitioner is awarded a new trial as to guilt or punishment—the success rate falls to approximately 3.3%.

Now, some may contend that looking at the entire modern era of capital punishment (1976 to the present) is not appropriate because some states may have had large systemic problems that skewed the success rates. I disagree with

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26. *See id.*

27. *See* Wolfe v. Johnson, 565 F.3d 140 (4th Cir. 2009); Gray v. Branker, 529 F.3d 220 (4th Cir. 2008); Walker v. Kelly, 195 F. App'x 169 (4th Cir. 2006); Conaway v. Polk, 453 F.3d 567 (4th Cir. 2006); Walker v. True, 399 F.3d 315 (4th Cir. 2005); Allen v. Lee, 366 F.3d 319 (4th Cir. 2004) (en banc) (per curiam); Brown v. Lee, 319 F.3d 162 (4th Cir. 2003); Williams v. True, 39 F. App'x 830 (4th Cir. 2002) (per curiam); Fullwood v. Lee, 290 F.3d 663 (4th Cir. 2002); Skipper v. French, 130 F.3d 603 (4th Cir. 1997); Thomas-Bey v. Nuth, Nos. 95-4000, 95-4001, 1995 WL 561296 (4th Cir. Sept. 22, 1995) (per curiam); Williams v. Dixon, 961 F.2d 448 (4th Cir. 1992), *abrogated by* Beard v. Banks, 542 U.S. 406 (2004); Washington v. Murray, 952 F.2d 1472 (4th Cir. 1991); McDowell v. Dixon, 858 F.2d 945 (4th Cir. 1988); Stockton v. Virginia, 852 F.2d 740 (4th Cir. 1988); Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987); Clark v. Townley, 791 F.2d 925 (4th Cir. 1986) (unpublished table decision). Note that this percentage does not include cases where the en banc court vacated the district court or panel's decision to grant relief.

28. *See* JAMES S. LIEBMAN ET AL., A BROKEN SYSTEM, PART II: WHY THERE IS SO MUCH ERROR IN CAPITAL CASES, AND WHAT CAN BE DONE ABOUT IT 9 (2002) (considering the success rates of twenty-eight states), http://www2.law.columbia.edu/brokensystem2/report.pdf.

any such assertion for several reasons. First, looking at success rates over a thirty-three year period should account for any such state-specific systemic disparities. Second, several of the states in the Fourth Circuit had their own systemic issues.[29] Third, for the most part, state courts address systemic issues after the United States Supreme Court identifies the constitutional defect.[30] Nevertheless, I decided to look at the more recent cases. If one examines just the capital habeas decisions issued by the Fourth Circuit during the last five years, things more or less stayed the same. One death-sentenced inmate was afforded habeas relief in the Fourth Circuit.[31] In comparison, other large circuits have much higher figures over the same period of time: there were seven successful cases in the Third Circuit,[32] eleven in the Fifth Circuit,[33] twenty-two in the Sixth Circuit,[34] and seventeen in the Ninth Circuit.[35] Even if one examines decisions

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29. *See, e.g.*, McKoy v. North Carolina, 494 U.S. 433, 435 (1990) (finding North Carolina unanimity requirement, which prevented the jury from considering "any mitigating factor that [it did] not unanimously find," unconstitutional); Mills v. Maryland, 486 U.S. 367, 384 (1988) (concluding that Maryland death penalty instruction was unconstitutional by requiring jurors to agree unanimously as to the existence of a mitigating circumstance).

30. For example, in *Skipper v. South Carolina*, 476 U.S. 1 (1986), the United States Supreme Court concluded that South Carolina's exclusion of evidence that a capital defendant would not be dangerous in prison violated the Eighth Amendment through the Fourteenth Amendment's Due Process Clause. *Id.* at 8. The South Carolina Supreme Court subsequently granted a number of death-sentenced inmates new sentencing trials because of *Skipper*. *See, e.g.*, Chaffee v. State, 294 S.C. 88, 91–92, 362 S.E.2d 875, 877 (1987) (granting new sentencing trial to death-sentenced inmate in light of Court's decision in *Skipper*); State v. Patterson, 290 S.C. 523, 529, 533, 351 S.E.2d 853, 856, 858 (1986) (same); State v. Matthews, 291 S.C. 339, 348–49, 353 S.E.2d 444, 450 (1986) (same).

31. *See Gray*, 529 F.3d at 242.

32. *See* Simmons v. Beard, 590 F.3d 223, 226 (3d Cir. 2009); Kindler v. Horn, 542 F.3d 70, 72 (3d Cir. 2008), *vacated sub nom.* Beard v. Kindler, 130 S. Ct. 612, 619 (2009); Bond v. Beard, 539 F.3d 256, 292 (3d Cir. 2008); Abu-Jamal v. Horn, 520 F.3d 272, 304 (3d Cir. 2008), *vacated*, No. 08-652, 2010 WL 154862, at *1 (U.S. Jan. 19, 2010); Holland v. Horn, 519 F.3d 107, 119 (3d Cir. 2008); Outten v. Kearney, 464 F.3d 401, 403 (3d Cir. 2006); Marshall v. Cathel, 428 F.3d 452, 453 (3d Cir. 2005).

33. *See* Adams v. Quarterman, 324 F. App'x 340, 356 (5th Cir. 2009); Haynes v. Quarterman, 561 F.3d 535, 541 (5th Cir. 2009), *rev'd sub nom.* Thaler v. Haynes, No. 09-273, 2010 WL 596511, at *4 (U.S. Feb. 22, 2010); Walbey v. Quarterman, 309 F. App'x 795, 806 (5th Cir. 2009); Reed v. Quarterman, 555 F.3d 364, 365 (5th Cir. 2009); Fratta v. Quarterman, 536 F.3d 485, 488 (5th Cir. 2008); Koon v. Cain, No. 07-70018, 2008 WL 1924217, at *1 (5th Cir. May 1, 2008); Mines v. Quarterman, 267 F. App'x 356, 362 (5th Cir. 2008); Tassin v. Cain, 517 F.3d 770, 772, 781 (5th Cir. 2008); Coble v. Quarterman, 496 F.3d 430, 448 (5th Cir. 2007); Draughon v. Dretke, 427 F.3d 286, 297 (5th Cir. 2005); Brooks v. Dretke, 418 F.3d 430, 431 (5th Cir. 2005).

34. *See* Awkal v. Mitchell, 559 F.3d 456, 457 (6th Cir. 2009), *reh'g en banc granted*, No. 01-4278, 2009 U.S. App. LEXIS 17145, at *1 (6th Cir. July 29, 2009); Van Hook v. Anderson, 560 F.3d 523, 530 (6th Cir. 2009), *rev'd per curiam sub nom.* Bobby v. Van Hook, 130 S. Ct. 13, 15 (2009); Johnson v. Bagley, 544 F.3d 592, 594 (6th Cir. 2008); Jells v. Mitchell, 538 F.3d 478, 513 (6th Cir. 2008); D'Ambrosio v. Bagley, 527 F.3d 489, 499–500 (6th Cir. 2008); Bies v. Bagley, 519 F.3d 324, 327 (6th Cir. 2008), *rev'd sub nom.* Bobby v. Bies, 129 S. Ct. 2145, 2149 (2009); Spisak v. Hudson, 512 F.3d 852, 853 (6th Cir. 2008), *rev'd sub nom.* Smith v. Spisak, 130 S. Ct. 676, 680 (2010); Morales v. Mitchell, 507 F.3d 916, 919 (6th Cir. 2007); Garner v. Mitchell, 502 F.3d 394, 397 (6th Cir. 2007), *rev'd en banc*, 557 F.3d 257, 258 (6th Cir. 2009); Richey v. Bradshaw, 498

issued over the last ten years, one would find that there are a total of three successful cases in the Fourth Circuit.[36] Thus, regardless of the time period examined, the success rates in the Fourth Circuit are quite low.

There are several other numbers, other than the low overall relief rate for death-sentenced inmates, which should be briefly mentioned. The overwhelming majority of dispositions in the Fourth Circuit (209 of 276) are panel decisions affirming the denial of habeas relief.[37] That is not surprising given the deference generally given by circuit courts to district court conclusions (especially factual findings) and the high affirmance rate in general in all circuits in all cases.[38] But the number of decisions issued by the Fourth Circuit reversing a district court grant of relief exceeds, by more than a threefold factor, the number of decisions reversing a district court denial of relief. On twenty-seven occasions, a panel has reversed a district court's decision in favor of a death-sentenced inmate;[39] in only

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F.3d 344, 364 (6th Cir. 2007); Haliym v. Mitchell, 492 F.3d 680, 685 (6th Cir. 2007); Davis v. Coyle, 475 F.3d 761, 781 (6th Cir. 2007); Joseph v. Coyle, 469 F.3d 441, 475 (6th Cir. 2006); Spisak v. Mitchell, 465 F.3d 684, 708 (6th Cir. 2006), *vacated mem. sub nom.* Hudson v. Spisak, 552 U.S. 945, 945–46 (2007); Williams v. Anderson, 460 F.3d 789, 817 (6th Cir. 2006); Getsy v. Mitchell, 456 F.3d 575, 577 (6th Cir. 2006), *rev'd en banc*, 495 F.3d 295, 300 (6th Cir. 2007); Poindexter v. Mitchell, 454 F.3d 564, 587 (6th Cir. 2006); Dickerson v. Bagley, 453 F.3d 690, 700 (6th Cir. 2006); Van Hook v. Anderson, 444 F.3d 830, 832 (6th Cir. 2006), *rev'd en banc*, 488 F.3d 411, 428 (6th Cir. 2007); Franklin v. Anderson, 434 F.3d 412, 431 (6th Cir. 2006); White v. Mitchell, 431 F.3d 517, 542–43 (6th Cir. 2005); Madrigal v. Bagley, 413 F.3d 548, 549 (6th Cir. 2005).

35. *See* Sechrest v. Ignacio, 549 F.3d 789, 817–18 (9th Cir. 2008); Styers v. Schriro, 547 F.3d 1026, 1036 (9th Cir. 2008); McMurtrey v. Ryan, 539 F.3d 1112, 1132 (9th Cir. 2008); Duncan v. Ornoski, 528 F.3d 1222, 1225–26 (9th Cir. 2008); Belmontes v. Ayers, 529 F.3d 834, 837 (9th Cir. 2008), *rev'd per curiam sub nom.* Wong v. Belmontes, 130 S. Ct. 383, 384 (2009); Correll v. Ryan, 539 F.3d 938, 956 (9th Cir. 2008); Jackson v. Brown, 513 F.3d 1057, 1060–61 (9th Cir. 2008); Lambright v. Schriro, 490 F.3d 1103, 1106 (9th Cir. 2007) (per curiam); Comer v. Schriro, 480 F.3d 960, 993 (9th Cir. 2007); Lankford v. Arave, 468 F.3d 578, 579 (9th Cir. 2006); Frierson v. Woodford, 463 F.3d 982, 984 (9th Cir. 2006); Hovey v. Ayers, 458 F.3d 892, 898 (9th Cir. 2006); Hoffman v. Arave, 455 F.3d 926, 945 (9th Cir. 2006), *vacated in part mem.* 552 U.S. 117, 118–19 (2008); Brown v. Lambert, 451 F.3d 946, 955 (9th Cir. 2006), *rev'd sub nom.* Uttecht v. Brown, 551 U.S. 1, 5 (2007); Clark v. Brown, 450 F.3d 898, 917 (9th Cir. 2006); Daniels v. Woodford, 428 F.3d 1181, 1214 (9th Cir. 2005); Summerlin v. Schriro, 427 F.3d 623, 627 (9th Cir. 2005).

36. *See Gray*, 529 F.3d at 242; Allen v. Lee, 366 F.3d 319, 322 (4th Cir. 2004) (en banc) (per curiam); Williams v. True, 39 F. App'x 830, 831 (4th Cir. 2002) (per curiam).

37. *See infra* Appendix A.

38. Chris Guthrie & Tracey E. George, *The Futility of Appeal: Disciplinary Insights into the "Affirmance Effect" on the United States Courts of Appeals*, 32 FLA. ST. U. L. REV. 357, 358 (2005) (reporting a 90% affirmance rate by the federal courts of appeals).

39. *See* Lawrence v. Branker, 517 F.3d 700 (4th Cir. 2008); Williams v. Ozmint, 494 F.3d 478 (4th Cir. 2007); Wilson v. Ozmint, 352 F.3d 847 (4th Cir. 2003); Wiggins v. Corcoran, 288 F.3d 629 (4th Cir. 2002), *rev'd sub nom.* Wiggins v. Smith, 539 U.S. 510 (2003); Booth-El v. Nuth, 288 F.3d 571 (4th Cir. 2002); Rose v. Lee, 252 F.3d 676 (4th Cir. 2001); Bacon v. Lee, 225 F.3d 470 (4th Cir. 2000); Ramdass v. Angelone, 187 F.3d 396 (4th Cir. 1999), *aff'd*, 530 U.S. 156 (2000); Colvin-El v. Nuth, Nos. 98-27, 98-29, 1999 WL 436776 (4th Cir. June 17, 1999); Williams v. Taylor, 163 F.3d 860 (4th Cir. 1998), *rev'd*, 529 U.S. 362 (2000); Strickler v. Pruett, Nos. 97-29, 97-30, 1998 WL 340420 (4th Cir. June 17, 1998) (per curiam); Noland v. French, 134 F.3d 208 (4th

eight instances, however, has the court reversed a decision denying the writ of habeas corpus.[40] When the en banc cases are added, the numbers go to thirty cases reversing a district court decision in the capital petitioner's favor,[41] with only nine reversing a denial of relief.[42] Thus the relatively high reversal rate in cases where the inmate prevailed in the district court is a significant factor driving down the overall relief rate.

Second, as should be clear from the figures reported above, the en banc outcomes are also stark. The Fourth Circuit has heard en banc ten capital habeas cases, nine of which were decided against the inmate either on the merits or on procedural grounds[43] and only one of which resulted in a decision favorable to the inmate.[44] The majority of these cases involved panel decisions that were favorable to the capital habeas petitioner.[45] Thus, the en banc court has been

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Cir. 1998); Satcher v. Pruett, 126 F.3d 561 (4th Cir. 1997); Pope v. Netherland, 113 F.3d 1364 (4th Cir. 1997); Stout v. Netherland, Nos. 95-4008, 95-4007, 1996 WL 496601 (4th Cir. Sept. 3, 1996) (per curiam); Hoke v. Netherland, 92 F.3d 1350 (4th Cir. 1996); Correll v. Thompson, 63 F.3d 1279 (4th Cir. 1995); Tuggle v. Thompson, 57 F.3d 1356 (4th Cir. 1995), *vacated sub nom.* Tuggle v. Netherland, 516 U.S. 10 (1995); Barnes v. Thompson, 58 F.3d 971 (4th Cir. 1995); Gray v. Thompson, 58 F.3d 59 (4th Cir. 1995); Noland v. Dixon, No. 93-4011, 1995 WL 253149 (4th Cir. May 1, 1995) (per curiam); Edmonds v. Thompson, Nos. 92-4011, 92-4012, 1994 WL 47745 (4th Cir. Feb. 16, 1994) (per curiam); Peterson v. Murray, 949 F.2d 704 (4th Cir. 1991) (per curiam); Boggs v. Bair, 892 F.2d 1193 (4th Cir. 1989); Brown v. Dixon, 891 F.2d 490 (4th Cir. 1989); Clanton v. Bair, 826 F.2d 1354 (4th Cir. 1987); Keeten v. Garrison, 742 F.2d 129 (4th Cir. 1984).

40. *See Gray*, 529 F.3d 220; Humphries v. Ozmint, 366 F.3d 266 (4th Cir. 2004), *rev'd en banc*, 397 F.3d 206 (4th Cir. 2005); Allen v. Lee, 319 F.3d 645 (4th Cir. 2003), *rev'd en banc*, 366 F.3d 319 (4th Cir. 2004); Mickens v. Taylor, 227 F.3d 203 (4th Cir. 2000), *rev'd en banc*, 240 F.3d 348 (4th Cir. 2001), *aff'd*, 535 U.S. 162 (2002); Williams v. Dixon, 961 F.2d 448 (4th Cir. 1992), *abrogated by* Beard v. Banks, 542 U.S. 406 (2004); McDowell v. Dixon, 858 F.2d 945 (4th Cir. 1988); Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987); Hyman v. Aiken, 777 F.2d 938 (4th Cir. 1985), *vacated mem.* 478 U.S. 1016 (1986).

41. *See* Gilbert v. Moore, 134 F.3d 642 (4th Cir. 1998) (en banc); O'Dell v. Netherland, 95 F.3d 1214 (4th Cir. 1996) (en banc); Smith v. Dixon, 14 F.3d 956 (4th Cir. 1994) (en banc); cases cited *supra* note 39.

42. *See* Allen v. Lee, 366 F.3d 319 (4th Cir. 2004) (en banc) (per curiam); cases cited *supra* note 40.

43. Walton v. Johnson, 440 F.3d 160 (4th Cir. 2006) (en banc); Humphries v. Ozmint, 397 F.3d 206 (4th Cir. 2005) (en banc); Rouse v. Lee, 339 F.3d 238 (4th Cir. 2003) (en banc); Mickens v. Taylor, 240 F.3d 348 (4th Cir. 2001) (en banc), *aff'd*, 535 U.S. 162 (2002); Gilbert v. Moore, 134 F.3d 642 (4th Cir. 1998) (en banc); Mackall v. Angelone, 131 F.3d 442 (4th Cir. 1997) (en banc); Howard v. Moore, 131 F.3d 399 (4th Cir. 1997) (en banc); O'Dell v. Netherland, 95 F.3d 1214 (4th Cir. 1996) (en banc); Smith v. Dixon, 14 F.3d 956 (4th Cir. 1994) (en banc).

44. *See Allen*, 366 F.3d 319.

45. *See, e.g.*, Walton v. Johnson, 407 F.3d 285 (4th Cir. 2005) (reversing lower court's decision and remanding case for evidentiary hearing), *rev'd en banc* 440 F.3d 160 (vacating panel's decision and affirming lower court's decision to deny the writ); Humphries v. Ozmint, 366 F.3d 266, 278 (4th Cir. 2004) (granting writ for purposes of resentencing), *rev'd en banc*, 397 F.3d at 209 (vacating panel's decision and affirming lower court's dismissal of defendant's petition); Mickens v. Taylor, 227 F.3d 203, 218 (4th Cir. 2000) (granting writ unless State retries defendant), *rev'd en banc*, 240 F.3d at 364 (denying defendant's petition for habeas relief); Gilbert v. Moore, 121 F.3d 144, 149 (4th Cir. 1997) (affirming lower court's grant of writ), *rev'd en banc*, 134 F.3d at 659 (reversing lower court's grant of writ); Mackall v. Murray, 109 F.3d 957, 964 (4th Cir. 1997)

active in eliminating panel decisions in the inmate's favor.[46] Stepping back and looking at the larger picture, one can see the following: (1) of the total number of habeas cases that make it to the Fourth Circuit, there are a relatively small number of victories for death-sentenced inmates; (2) of the habeas cases in which the Fourth Circuit reverses a district court, the court reverses favorable district court decisions in capital habeas cases more than 75% of the time; and (3) of the cases where a death-sentenced inmate does prevail before a three-judge panel, the en banc court has been active in vacating those decisions.

III. EXPLAINING THE "NUMBERS"

The numbers game can be a tricky business. Mark Twain once said, "There are three kinds of lies: lies, damned lies, and statistics."[47] Thus, it is true that there are potentially a number of reasons for the very low success rate in capital habeas cases in the Fourth Circuit. Next, I will explore several of the possible explanations.

One explanation could be that the state appellate courts in the Fourth Circuit do a more rigorous job of screening cases on direct appeal and in state post conviction, and thus, the pool of cases entering federal habeas may be different. But that does not appear to be true. The Virginia Supreme Court, for example, has an even lower reversal rate in capital cases than does the Fourth Circuit.[48] There has been some variability in the reversal rates of the North Carolina and South Carolina Supreme Courts in capital cases.[49] But overall, any objective observer would reject the assertion that the state courts in the Fourth Circuit are particularly hospitable to death-row appellants, and as just discussed, the reversal rates bear that out. Thus, rigorous review of capital cases by the state courts does not explain the low success rates of capital habeas petitioners in the Fourth Circuit.

Another possible explanation is that the trial-level capital defense bar is better in the Fourth Circuit than in other jurisdictions. Because many death-row inmates win on some form of ineffective assistance of counsel claim in federal

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(remanding case to lower court for hearing on effectiveness of defendant's habeas counsel), *rev'd en banc sub nom.* Mackall v. Angelone, 131 F.3d at 451 (vacating panel's decision and affirming lower court's dismissal of defendant's petition); Smith v. Dixon, 996 F.2d 667, 680 (4th Cir. 1993) (affirming lower court's decision to grant writ), *rev'd en banc*, 14 F.3d at 982 (reversing lower court's decision to grant writ).

46. Again, in the interest of full disclosure, let me give another brief disclaimer in the sour grapes vein. I may be the only lawyer in capital habeas history who represented a client who was successful in the district court, who was successful (in a unanimous decision) before a three-judge panel, and then who had relief taken away by the en banc court in a unanimous decision. *See Gilbert*, 134 F.3d 642.

47. Mark Twain, *Chapters from My Autobiography—XX*, N. AM. REV., July 5, 1907, at 465, 471, *reprinted in* MARK TWAIN, CHAPTERS FROM MY AUTOBIOGRAPHY (1996).

48. *See* Blume & Eisenberg, *supra* note 21, at 486 tbl.2.

49. *See id.*

court, maybe the lawyers are better. This becomes more of a possibility to explore when one looks at the number of ineffective assistance of counsel wins in capital cases. There have been three successful ineffective assistance of counsel claims in thirty-three years in the Fourth Circuit, and they actually do balance out at one a decade.[50] This is in stark contrast to the number of ineffective assistance of counsel wins in other federal courts of appeals.[51] Admittedly, there is some subjectivity in attempting to determine what constitutes a good defense and a good capital defense lawyer. But from a funding perspective, until the mid-1990s, there was virtually no funding in South Carolina at the trial level for experts or investigators, and attorney compensation was so low that lawyers frequently did not submit vouchers for attorneys' fees. Things became better after the South Carolina Supreme Court's decision in *Bailey v. State*,[52] but I doubt capital trial lawyers would say they believe that South Carolina is the death penalty "promised land." The same holds true, in somewhat varying degrees, in Maryland, North Carolina, and Virginia. The standards for appointment of trial counsel in the Fourth Circuit states are not more rigorous than the standards in other jurisdictions, and there are not any special continuing legal education or training requirements for appointment at the capital trial level. In recent years, most Fourth Circuit states, including South Carolina, have created certification programs for capital-case counsel[53] as well as statewide capital defender offices,[54] and the payoff has been immediate. The number of death sentences imposed in Maryland, Virginia, and North Carolina has plummeted, and the number of new sentences in South Carolina has also

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50. *See* Gray v. Branker, 529 F.3d 220, 223 (4th Cir. 2008); Thomas-Bey v. Nuth, Nos. 95-4000, 95-4001, 1995 WL 561296, at *2 (4th Cir. Sept. 22, 1995) (per curiam); Clark v. Townley, 791 F.2d 925 (4th Cir. 1986) (unpublished table decision). On one occasion, a panel of the Fourth Circuit granted relief to a petitioner based on ineffective assistance of counsel, but the en banc court vacated the decision and affirmed the lower court's dismissal of the petition. *See Humphries*, 366 F.3d at 278 (granting writ for purposes of resentencing), *rev'd en banc*, 397 F.3d at 209 (vacating panel's decision and affirming lower court's dismissal of defendant's petition).

51. *See* John H. Blume & Stacey D. Neumann, *"It's Like Deja Vu All Over Again":* Williams v. Taylor, Wiggins v. Smith, Rompilla v. Beard *and a (Partial) Return to the Guidelines Approach to the Effective Assistance of Counsel*, 34 AM. J. CRIM. L. 127, 162 (2007); Kenneth Williams, *Does* Strickland *Prejudice Defendants on Death Row?*, 43 U. RICH. L. REV. 1459, 1478 (2009).

52. 309 S.C. 455, 464, 424 S.E.2d 503, 508 (1992) (holding that attorneys' hourly rates and cap set by state law does not create an absolute ceiling on attorney compensation in capital cases but simply limits the amount of state funding allocated and explaining that counties must supplement attorney compensation "as required in a given case").

53. *See* S.C. CODE. ANN. § 16-3-26(F) (2003) ("The Supreme Court shall promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases.").

54. *See, e.g.*, The North Carolina Court System, Office of Indigent Defense Services, http://www.aoc.state.nc.us/www/ids/ (follow "IDS Office" hyperlink; then follow "What is IDS?" hyperlink) (last visited Mar. 13, 2010) (noting that the Office of Indigent Defense Services works closely with the Office of the Capital Defender); Virginia Indigent Defense Commission, http://www.publicdefender.state.va.us (follow "About Us" hyperlink) (last visited Mar. 13, 2010) (setting forth the Virginia Capital Defender Offices).

decreased.[55] The statewide capital defender in South Carolina recently obtained a significant victory in a hard fought Charleston County case.[56] But, that case and those developments are all too recent to effect the cases that have proceeded into federal court. So, I do not think, to quote my favorite lawyer, Vinny, the protaganist in one of the best lawyer movies of all time, *My Cousin Vinny*,[57] that the better counsel argument "holds water."

There are some other explanations to consider. For example, it is possible that the Fourth Circuit states have narrower capital-sentencing statutes that restrict the pool of death-eligible cases, thus helping sort out the death wheat from the death chaff. That might have some influence in Virginia, which has a trigger-man rule, where only the actual killer can get the death penalty in a codefendant or multiple-defendant case.[58] But most other states in the Fourth Circuit have very broad capital-murder schemes that make almost any murder death eligible.[59] Moreover, prosecutors do not appear to exercise more discretion in their death-seeking behavior. In Fourth Circuit states, the number of death sentences obtained in relationship to the number of murders is more or less average when compared to death-penalty states in other circuits.[60] Or maybe it is because more of the judges on the Fourth Circuit have been state or federal prosecutors or state court judges than in other circuits? But that also does not appear to be the case. Many Fourth Circuit judges have that type of experience,[61] but so do many judges on other federal courts of appeal. It is a common judicial career path.

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55. *See* Death Penalty Information Center, Death Sentences in the United States from 1977 to 2008, http://www.deathpenaltyinfo.org/death-sentences-united-states-1977-2008 (last visited Mar. 13, 2010); *see also* DEATH PENALTY INFO. CTR., THE DEATH PENALTY IN 2009: YEAR END REPORT 1 (2009), http://www.deathpenaltyinfo.org/documents/2009YearEndReport.pdf ("The drop in death sentences was particularly pronounced in . . . Virginia.").

56. Robert Behre, *Mistrial Declared in Capital Case*, THE POST & COURIER, Sept. 30, 2009, at A1.

57. MY COUSIN VINNY (Twentieth Century Fox 1992).

58. *See* VA. CODE ANN. §§ 18.2-18, -31 (2008).

59. *See, e.g.*, MD. CODE ANN., CRIM. LAW § 2-303(g) (LexisNexis Supp. 2009) (listing fifteen aggravating circumstances); N.C. GEN. STAT. § 15A-2000(e) (2009) (listing eleven aggravating circumstances); S.C. CODE ANN. § 16-3-20(C)(a) (2003 & Supp. 2009) (listing twenty-one aggravating circumstances); *see also* John H. Blume et al., *When Lightning Strikes Back: South Carolina's Return to the Unconstitutional, Standardless Capital Sentencing Regime of the Pre-Furman Era*, 4 CHARLESTON L. REV. (forthcoming 2010) (arguing that recent South Carolina expansion of aggravating factors that make a murder death eligible creates a standard in the state that almost all murder cases can meet). *But see* W. VA. CODE ANN. § 61-11-2 (LexisNexis 2005) (abolishing the death penalty).

60. *See* Blume et al., *Explaining Death Row's Population and Racial Composition*, *supra* note 21, at 172 tbl.1 (providing a table and an explanation of the death-sentence rates for the thirty-one states that have ten death-row inmates or more).

61. For example, Chief Judge Traxler was both a state court prosecutor and a state court judge. Federal Judicial Center, Judges of the United States Courts, http://www.fjc.gov/public/home.nsf/hisj (follow "T" hyperlink; then follow "Traxler, William Byrd Jr." hyperlink) (last visited Mar. 13, 2010).

IV. A QUALITATIVE EXPLANATION FOR WHY CAPITAL HABEAS PETITIONERS LOSE

The bottom line is that the low success rates of capital habeas petitioners can not be explained by any clear, objective criteria. Regardless, I do not think this is an unsolvable riddle. Although not necessarily empirically provable, I will attempt to demonstrate in the remainder of this Essay that the resounding rejection of virtually all claims raised by capital habeas petitioners is primarily attributable to the fact that the circuit utilizes a very deferential approach—more deferential and hands-off than other circuits—to the decisions of state courts, to the application of state procedural rules, and to the actions of state prosecutors and capital trial counsel. The court almost always resolves the benefit of the doubt against the inmate, and it is willing to engage in a determined search for reasons justifying its decision to leave the state court death verdict intact. Let me now endeavor to offer evidence in support of my theory.

A. Ineffective Assistance of Counsel

I will begin by addressing the court's treatment of ineffective-assistance-of-counsel claims. This is the most common claim asserted by capital habeas petitioners[62] and probably, in most circuits, is the most common successful claim leading to a new trial or sentencing hearing.[63] To establish entitlement to habeas relief, a death-sentenced inmate must demonstrate both that trial counsel's performance was "deficient" and that counsel's deficient performance was prejudicial.[64] The Supreme Court has defined deficient performance as conduct that "fell below an objective standard of reasonableness."[65] To satisfy the prejudice requirement, the defendant must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[66]

As for the performance prong, the Fourth Circuit has, in many cases, credited facially "strategic" reasons offered by trial counsel for their actions without subjecting such actions to meaningful scrutiny. In Kevin Wiggins's case, for example, his trial counsel justified the failure to present evidence of Wiggins's low intellectual functioning and history of sexual abuse on the basis that it was inconsistent with the theory that Wiggins was not the principal actor

62. *See* David A. Sklansky & Stephen C. Yeazell, *Comparative Law Without Leaving Home: What Civil Procedure Can Teach Criminal Procedure, and Vice Versa*, 94 GEO. L.J. 683, 723 n.151 (2006).

63. *See supra* note 51 and accompanying text.

64. Strickland v. Washington, 466 U.S. 668, 687 (1984).

65. *Id.* at 687–88.

66. *Id.* at 694.

in the murder.[67] Counsel testified that, given this strategy, she elected not to present the mitigating evidence of Wiggins's intellectual impairments and social history in order to avoid a "shotgun approach" to the sentencing phase.[68] The panel majority credited that reason.[69] But, as the Supreme Court pointed out in its decision reversing the Fourth Circuit, counsel did not, in fact, focus exclusively on Wiggins not being the actual killer.[70] Rather counsel went with a weak, "halfhearted" shotgun approach.[71] This type of reversal is not a one-time occurrence.[72] Embracing facially plausible strategic reasons that are without support in the record has happened in a number of cases. For instance, in *Drayton v. Moore*,[73] counsel testified in postconviction proceedings that he did not present evidence of Drayton's mental state, hypoglycemia, or substance abuse because he wanted to portray Drayton in a "positive light."[74] Under all circumstances, failing to present mitigation evidence establishing that the client had neurological damage in order to focus on "good guy" evidence would be a risky gamble, especially if the same jury has just found the defendant guilty of murder. But the real rub in Drayton's case is that counsel did not even make such portrayal. He presented no evidence of Drayton's good character, and to rub salt in the wound, he attacked Drayton's character in his penalty phase summation.[75] Trial counsel described his client as someone who was "probably as far down the rung of our society as we can get" and someone who "had every opportunity to climb up that ladder" but who chose not to do it.[76] Counsel also decribed Drayton as "far from [being] a nice . . . fellow" and as someone whose "true peers" were not the jurors but "people who have problems with the law."[77] In sum, the Fourth Circuit's overall approach to assessing whether counsel's performance was constitutionally adequate is highly deferential, and virtually anything trial counsel presents as a strategic reason will be credited even in the face of evidence in the record to the contrary.

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67. *See* Wiggins v. Corcoran, 288 F.3d 629, 635, 642–43 (4th Cir. 2002), *rev'd sub nom.* Wiggins v. Smith, 539 U.S. 510 (2003).

68. *Id.* at 643.

69. *Id.* ("The district court failed to heed this admonition [to credit plausible strategic judgments]. . . . The Maryland Court of Appeals found his judgment sound on the basis of the factual record before it, and even if we were of opinion that the Maryland Court's decision was in error, we cannot say that it was unreasonable.").

70. *Wiggins*, 539 U.S. at 526.

71. *Id.* (citing Wiggins v. State, 724 A.2d 1, 15 (Md. 1999)).

72. *See, e.g.*, Williams v. Taylor, 529 U.S. 362, 395–99 (2000) (rejecting the Fourth Circuit's decision finding that trial counsel's performance was reasonable and not prejudicial), *rev'g* 163 F.3d 860 (4th Cir. 1998).

73. No. 98-18, 1999 WL 10073 (4th Cir. Jan. 12, 1999).

74. *Id.* at *3 (internal quotation marks omitted).

75. Sheri Lynn Johnson, *Wishing Petitioners to Death: Factual Misrepresentations in Fourth Circuit Capital Cases*, 91 CORNELL L. REV. 1105, 1116 (2006).

76. *Id.* at 1117 (internal quotation marks omitted).

77. *Id.* at 1118 (internal quotation marks omitted).

In evaluating (and rejecting) the prejudice prong of ineffective assistance of counsel claims, the Fourth Circuit has taken a different track. Many ineffective assistance of counsel claims turn on whether counsel failed to investigate, develop, and present mitigation evidence at the sentencing phase of the trial.[78] The court has frequently dispensed with the prejudice prong using a creation of its own doctrine, which is sometimes referred to as the "double-edged sword" doctrine.[79] When examining the mitigation evidence that counsel did not present, the court is prone to rule that, while it is true there was a mitigating aspect to the evidence—evidence that might lead a juror to determine that life imprisonment rather than the death penalty was the appropriate punishment—some jurors might have deemed the evidence aggravating, making the evidence a reason to sentence the defendant to death.[80] Thus, because it is not clear how the jury would evaluate the unpresented mitigation evidence, the court reasons that counsel's failure to do so did not affect the outcome.[81] Again, Kevin Wiggins's case is instructive. Wiggins's federal habeas counsel alleged that the trial counsel should have presented information that Wiggins was very low functioning intellectually and that he was physically and sexually abused as a child.[82] The panel rejected Wiggins's argument, reasoning that "not all of the available social history evidence is unequivocally mitigating. Here, the jury could just as easily have viewed Wiggins' childhood and limited mental capacity as an indicator of future lawlessness."[83] A seven-to-two majority of the Supreme Court, however, found the evidence to be sufficiently mitigating so as to create a reasonable probability of a different outcome.[84]

There are many, many instances of the Fourth Circuit's use of the double-edged sword doctrine in capital habeas cases.[85] To discuss just briefly one other example, in J.D. Gleaton's case, the unpresented mitigation evidence involved evidence of Gleaton's extreme poverty and deprivation during childhood, brain damage from exposure to neurotoxins, and a drug habit that developed after he was in a near fatal car wreck, in which he broke his neck and had multiple holes drilled in his skull to which a "halo" neck brace was attached.[86] His claim ran aground on the circuit's rocky prejudice shoals because, "[a]lthough evidence that a defendant suffers from a mental impairment or has abused drugs or

78. *See* Jonathan P. Tomes, *Damned if You Do, Damned if You Don't: The Use of Mitigation Experts in Death Penalty Litigation*, 24 AM. J. CRIM. L. 359, 360–61 (1997).

79. *See* John H. Blume & Sheri Lynn Johnson, *The Fourth Circuit's "Double-Edged Sword": Eviscerating the Right to Present Mitigating Evidence and Beheading the Right to the Assistance of Counsel*, 58 MD. L. REV. 1480, 1480–81 (1999).

80. *See id.*

81. *Id.* at 1497.

82. *See* Wiggins v. Corcoran, 288 F.3d 629, 635 (4th Cir. 2002), *rev'd sub nom.* Wiggins v. Smith, 539 U.S. 510 (2003).

83. *Id.* at 642.

84. *Wiggins*, 539 U.S. at 537.

85. *See* Blume & Johnson, *supra* note 79, at 1497 (citing cases).

86. *Id.* at 1491–94.

narcotics may diminish his blameworthiness for his crime, this evidence is a two-edged sword."[87] Under this doctrine, the court almost necessarily rejects penalty phase ineffective assistance of counsel claims.[88]

The combination of the court's extreme deference to purported strategic reasons when assessing counsel's competence and its willingness to conclude that the evidence may be double-edged when evaluating prejudice is, in most cases, literally lethal.[89] Furthermore, it explains why the circuit has found counsel to have provided representation that fell below the Sixth Amendment's quite low bar on only three occasions over the last thirty-three years,[90] and it shows why the majority of favorable district court decisions, many of which were based on findings that trial counsel's representation did not satisfy the Sixth Amendment, were reversed on appeal by a panel or the en banc court.[91]

B. Prosecutorial Withholding of Exculpatory Evidence

Another common claim in capital habeas litigation is that the prosecution's failure to disclose exculpatory information violated the petitioner's rights under the Due Process Clause of the Fourteenth Amendment.[92] To prevail on what is commonly called a *Brady* claim, which is based on the Supreme Court's decision in *Brady v. Maryland*,[93] a habeas petitioner must prove three things: (1) that the prosecution withheld information; (2) that the information was favorable to the defense; and (3) that the information was "material"—that is, that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[94]

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87. Gilbert v. Moore, 134 F.3d 642, 655 (4th Cir. 1998) (en banc). Gleaton was a codefendant in *Gilbert*. *Id.* at 645.

88. *See* Blume & Johnson, *supra* note 79, at 1497.

89. *See id.*

90. *See supra* note 50 and accompanying text.

91. *See, e.g.*, Lawrence v. Branker, 517 F.3d 700, 704 (4th Cir. 2008) (reversing lower court's grant of habeas relief, which was based on ineffective assistance of counsel reasoning); Williams v. Ozmint, 494 F.3d 478, 481 (4th Cir. 2007) (same); Wilson v. Ozmint, 352 F.3d 847, 857 (4th Cir. 2003) (same); Wiggins v. Corcoran, 288 F.3d 629, 643 (4th Cir. 2002) (same), *rev'd sub nom.* Wiggins v. Smith, 539 U.S. 510 (2003); Rose v. Lee, 252 F.3d 676, 696 (4th Cir. 2001) (same); Williams v. Taylor, 163 F.3d 860, 866 (4th Cir. 1998) (same), *rev'd*, 529 U.S. 362 (2000).

92. *See, e.g.*, Banks v. Dretke, 540 U.S. 668, 675–76 (2004) (holding that a death-sentenced inmate was entitled to a new sentencing proceeding as a result of the prosecution's failure to provide the defense with favorable information); Kyles v. Whitley, 514 U.S. 419, 421–22 (1995) ("Because the net effect of the evidence withheld by the State in this case raises a reasonable probability that its disclosure would have produced a different result, Kyles is entitled to a new trial.").

93. 373 U.S. 83 (1963).

94. United States v. Bagley, 473 U.S. 667, 675, 682 (1985).

The Fourth Circuit has, in general, construed all three elements of the due process standard in a parsimonious manner.[95] Moreover, it has also, in a manner similar to the double-edged sword doctrine adopted and used by the circuit in the ineffective assistance of counsel context, created a "gloss" on the relevant legal standard for adjudicating withholding of exculpatory information claims. Thus, even if the habeas petitioner proves that the prosecution did not disclose exculpatory information, the claim will still fail if the court concludes that the defendant—had he acted in a diligent manner—could have reasonably discovered the evidence. For example, in *Barnes v. Thompson*,[96] the district court found that a Virginia death-row inmate was entitled to a new sentencing trial because the prosecution failed to disclose that a gun was found on the victim's body.[97] The district court judge, a former prosecutor himself, deemed this to be exculpatory in light of the defense's theory of the case.[98] The Fourth Circuit reversed on the basis that Barnes's trial counsel was not diligent in discovering this information.[99] The court observed that at the codefendant's trial, which took place two weeks prior to Barnes's trial, a police officer admitted that the victim was armed.[100] Counsel was not diligent, the court found, because he did not attend the codefendant's trial or read transcripts from it.[101] The court has invoked the due diligence exception to the *Brady* rule elsewhere as well.[102]

C. Racially Discriminatory Use of Peremptory Challenges

Racial discrimination and the death penalty have a long, common history, especially in the South.[103] And issues of race arise in capital litigation in a variety of contexts.[104] But probably the most common race issue that arises

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95. *See, e.g.*, Johnson v. Moore, Nos. 97-33, 97-7801, 1998 WL 708691, at *12 (4th Cir. Sept. 24, 1998) (finding that the prosecution's failure to disclose that its primary witness recanted her testimony before Johnson's second trial did not violate due process).

96. 58 F.3d 971 (4th Cir. 1995).

97. *Id.* at 973–74.

98. *See id.* at 973.

99. *See id.* at 972, 976–77.

100. *Id.* at 976.

101. *Id.* at 977.

102. *See, e.g.*, Hoke v. Netherland, 92 F.3d 1350, 1355 (4th Cir. 1996) (noting that if the defendant had "undertaken a 'reasonable and diligent' investigation," he would have uncovered the undisclosed evidence).

103. *See generally* John H. Blume et al., *Post-*McClesky *Racial Discrimination Claims in Capital Cases*, 83 CORNELL L. REV. 1771 (1998) (discussing the history of racial discrimination claims in capital cases in southern states as well as states from other parts of the United States).

104. *See, e.g.*, McClesky v. Kemp, 481 U.S. 279, 306, 312 (1987) (rejecting defendant's Eighth Amendment challenge to his death sentence but acknowledging that the statistical evidence indicates racial discrepanices in the capital sentencing context); Turner v. Murray, 476 U.S. 28, 35–37 (1986) (holding that the capital defendant was entitled to inquire on voir dire about a juror's racial attitudes given the "unique opportunity for racial prejudice" to infect the capital sentencing decision); State v. Bennett, 369 S.C. 219, 232, 632 S.E.2d 281, 288 (2006) (rejecting a death-

involves challenges to the prosecution's use of its peremptory challenges.[105] The issue is commonly referred to as the *Batson* issue, again based on the seminal Supreme Court case establishing the right.[106] When asserting a *Batson* violation, death-sentenced inmates, particularly inmates of color, allege that the prosecution exercised its peremptory strikes to exclude jurors on the basis of race, gender, or national origin.[107] To be successful, the defendant must first establish a prima facie case of discrimination in the State's use of its peremptory challenges.[108] If the defendant establishes a prima facie case, the burden shifts to the prosecution to offer a race-neutral reason for the challenge.[109] If the prosecution does so, the trial court must determine whether the proffered race-neutral reason was pretextual.[110]

In assessing *Batson* claims, the Fourth Circuit, in addition to the deference it gives to prosecutors' stated reasons for challenging minority jurors, has embraced a unique approach that allows it to dismiss a death-sentenced inmate's arguments more easily. In *Howard v. Moore*,[111] for example, a majority of the en banc court rejected Howard's comparative juror analysis agrument—that the prosecution did not strike white jurors who gave similar answers to the black jurors that the prosecution struck—on the basis that the challenges could have been justified by differences in the jurors' demeanors, facial expressions, etc.[112] But the problem was that the prosecutor in *Howard* never said anything about the jurors' demeanor at the time the prosecutor challenged the jurors.[113] Thus, the court adopted what is in effect a "hypothetical" demeanor rule. It does not matter if a prosecutor in fact relied on a juror's demeanor; rather, it only matters that the prosecutor *could* have decided to challenge a juror based on demeanor.

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sentenced inmate's argument that referring to an African-American defendant as "King Kong" was an appeal to racial bias).

105. *See* Snyder v. Louisiana, 552 U.S. 472, 474 (2008); Miller-El v. Dretke, 545 U.S. 231, 235 (2005); Miller-El v. Cockrell, 537 U.S. 322, 326 (2003); Ford v. Georgia, 498 U.S. 411, 413 (1991).

106. Batson v. Kentucky, 476 U.S. 79, 86, 98 (1986) (holding that a defendant is entitled to a new trial if the prosecution uses its peremptory challenges in a racially discriminatory manner).

107. *See supra* notes 105–106 and accompanying text. Nationally, there have been several documented instances of prosecutors being trained to challenge minority jurors, particularly African-American jurors, on the assumption that those jurors will be much more reluctant to impose the death penalty, particularly on a minority defendant. *See, e.g.*, *Miller-El*, 545 U.S. at 264 (citing *Miller-El*, 537 U.S. at 334–45) (noting the existence of a training manual used by Dallas District Attorney's Office advising prosecutors to peremptorily challenge minority jurors); Wilson v. Beard, 426 F.3d 653, 655 (3d Cir. 2005) (holding that a *Batson* violation occurred where the prosecutor in the case, Jack McMahon, discussed on a training videotape his method of jury selection, which included strategically using peremptory challenges to prevent African-Americans from serving on juries).

108. *Batson*, 476 U.S. at 96.

109. *Id.* at 97.

110. *Id.* at 98.

111. 131 F.3d 399 (4th Cir. 1997) (en banc).

112. *Id.* at 408 (citing Matthews v. Evatt, 105 F.3d 907, 918 (4th Cir. 1997)).

113. *See* Johnson, *supra* note 75, at 1127.

Because the answer to that question is invariably yes, *Batson* claims in the Fourth Circuit are destined to fail.[114]

D. Procedural Default

As a general matter, a federal court cannot review a claim in habeas if the issue is procedurally barred unless the petitioner can demonstrate "cause" and "prejudice."[115] A procedural default occurs if the petitioner fails to comply with an established rule of state criminal procedure, such as a contemporaneous objection requirement.[116] As I have argued elsewhere, many procedural default rules do not improve efficiency or promote the systemic interests of comity and federalism.[117] However, they do permit state and federal courts to affirm patently unfair and unjust decisions.[118] The Fourth Circuit accepts most state court assertions of procedural default at face value without rigorously examining the following: (a) whether the state court default rule actually exists; (b) whether the rule is consistently and regularly applied; and (c) whether the rule, if it does exist and is regularly applied, is independent of federal law.[119]

Johnson v. Moore[120] is a painful example of the unblinking acceptance of a state assertion that a claim was procedurally barred. After the district court denied Johnson's habeas petition, the Fourth Circuit held that all of Johnson's habeas challenges to his conviction were defaulted because when Johnson addressed the jury at the conclusion of the guilt-or-innocence phase of his trial, he made the comment that he had "no defense for anything."[121] In denying state postconviction relief, the state PCR court adopted verbatim an order drafted by the South Carolina Attorney General's office.[122] That order deemed issues going to guilt barred due to Johnson's admission of guilt.[123] However, as Johnson pointed out in his appellate brief, South Carolina did not have any such rule; futhermore, Johnson apprized the court of numerous cases where the state courts reviewed a legal issue going to guilt in capital cases despite much clearer admissions of guilt than Johnson's vague statement.[124] There was, in short, no "Suicide for Saying You Are Sorry" rule in South Carolina.

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114. *See* Bell v. Ozmint, 332 F.3d 229, 241 (4th Cir. 2003) (noting that both the prosecution and the defense can make "'credibility determinations'" in using peremptory challenges (quoting *Howard*, 131 F.3d at 408)); *Matthews*, 105 F.3d at 918 (relying in part on hypothetical demeanor not found in the record to reject *Batson* claim).

115. Wainwright v. Sykes, 433 U.S. 72, 87 (1977).

116. *See* John H. Blume & Pamela A. Wilkins, *Death by Default: State Procedural Default Doctrine in Capital Cases*, 50 S.C. L. REV. 1, 4–5 (1998).

117. *See id.* at 42.

118. *See id.*

119. *See id.* at 23–25.

120. Nos. 97-33, 97-7801, 1998 WL 708691 (4th Cir. Sept. 24, 1998).

121. *Id.* at *3–4, *9.

122. *Id.* at *13 n.9.

123. *Id.* at *3.

124. *See id.* at *4–5; Blume & Wilkins, *supra* note 116, at 25.

Johnson then returned to the South Carolina state courts in an effort to rectify the procedural error.[125] He filed a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court, asking it to address the alleged procedural default rule.[126] The state court's subsequent decision clearly revealed that the Fourth Circuit erred in finding Johnson's claims defaulted because it emphatically rejected any notion that such a procedural bar rule existed.[127] Johnson then returned to federal court and asked the Fourth Circuit to recall the mandate to avoid a miscarriage of justice.[128]

The court denied Johnson's motion, reasoning that a "change in state law" did not warrant recalling the mandate.[129] Despite the fact that there was ample reason to question Johnson's guilt, he was subsequently executed without a federal court reviewing the merits of issues concerning his guilt or innocence.[130] Richard Johnson's case is one of a number of cases where the Fourth Circuit has failed to inquire into whether a death-sentenced inmate's claim is in fact procedurally barred under existing Supreme Court doctrine.[131]

E. AEDPA

On April 24, 1996, President Clinton signed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).[132] AEDPA contained a number of habeas corpus "reforms," including a statute of limitations requiring petitioners to file a habeas petition within a year of their convictions and sentences becoming "final" on direct appeal,[133] expedited time lines for the disposition of capital cases by district courts and federal courts of appeals in certain qualifying "opt-in" jurisdictions,[134] and restrictions on a federal court's power to grant an evidentiary hearing if the petitioner failed to develop the facts in state court.[135] But the centerpiece of the legislation was 28 U.S.C. § 2254(d), which limits a federal court's ability to grant the writ of habeas corpus unless the state court decision was "contrary to, or involved an unreasonable application of, clearly

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125. *See* Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999).

126. *Id.* at 355–56, 520 S.E.2d at 618.

127. *See id.* at 358–59, 520 S.E.2d at 619.

128. Johnson v. Moore, Nos. 97-33, 97-7801 (4th Cir. Sept. 21, 1999) (order denying motion to recall mandate).

129. *Id.*

130. *See* Rick Brundrett & Clif LeBlanc, *Lethal Injection Ends Life of Convicted Killer*, THE STATE, May 4, 2002, at A1; Editorial, *Governor Should Commute Sentence of Richard Johnson*, THE STATE, Apr. 30, 2002, at A6.

131. *See* Blume & Wilkins, *supra* note 116, at 23–26 (discussing other cases).

132. Pub. L. No. 104-132, 110 Stat. 1214. For a more detailed discussion of AEDPA and its effects, see John H. Blume, *AEDPA: The "Hype" and the "Bite,"* 91 CORNELL L. REV. 259 (2006).

133. 28 U.S.C. § 2244(d)(1)(A) (2006).

134. *Id.* §§ 2261, 2263, 2266.

135. *Id.* § 2254(e)(2).

established Federal law" or involved "an unreasonable determination of the facts."[136]

Many provisions of AEDPA have been criticized by scholars and courts as contributing to the complexity of habeas litigation rather than meaningfully contributing to making the habeas process more efficient.[137] On virtually every occasion, the Fourth Circuit has construed provisions of AEDPA in the most state court protective manner. In *Rouse v. Lee*,[138] for example, an African-American death-row inmate offered uncontradicted evidence that a juror intentionally concealed during voir dire that his mother had been raped and murdered "because he wanted to be on the jury that judged Rouse."[139] Moreover, the evidence established that the same juror was racially biased, referred to African-Americans as "'niggers[,]' and opin[ed] that African Americans care less about life than white people do and that African-American men rape white women in order to brag to their friends."[140] The en banc court dismissed Rouse's habeas petition as untimely because Rouse's attorneys filed the federal habeas petition one day late.[141] It could have granted Rouse equitable tolling,[142] especially given that Rouse lacked the mental capacity to monitor effectively his court-appointed counsel in such a way so as to prevent the petition from being filed one day late.[143] But, it elected not to do so.[144]

The circuit has also concluded that, under § 2254(d), state court decisions that violate federal constitutional law will be upheld unless "all reasonable jurists" would conclude that the state court decision was unreasonable.[145] It has also held that § 2254(d) supports state court decisions that are "minimally consistent" with the law[146] or that have objectively reasonable bottom line

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136. *Id.* § 2254(d).

137. *See, e.g.*, Lindh v. Murphy, 521 U.S. 320, 336 (1997) ("[I]n a world of silk purses and pigs' ears, the [AEDPA] is not a silk purse of the art of statutory drafting."); LARRY W. YACKLE, FEDERAL COURTS: HABEAS CORPUS 57 (2003) ("AEDPA is notorious for its poor drafting. The Act is replete with vague and ambiguous language, apparent inconsistency, and plain bad grammar."); James S. Liebman, *An "Effective Death Penalty"? AEDPA and Error Detection in Capital Cases*, 67 BROOK. L. REV. 411, 426 (2001) ("AEDPA complicates review . . . because of its poor drafting.").

138. 339 F.3d 238 (4th Cir. 2003) (en banc).

139. *Id.* at 257–58 (Motz, J., dissenting).

140. *Id.* at 257.

141. *Id.* (majority opinion).

142. *See id.* at 246.

143. *See id.* at 260 (Motz, J., dissenting).

144. *Id.* at 257 (majority opinion).

145. Sheppard v. Taylor, No. 98-12, 1998 WL 743663, at *4 (4th Cir. Oct. 23, 1998) ("We cannot conclude, however, that at the time Sheppard's convictions and sentences became final, all reasonable jurists would have agreed that the admission of the evidence to which he points violated due process.").

146. Blakeney v. Branker, 314 F. App'x 572, 579 (4th Cir. 2009) ("Although the precise reason for the court's decision is not entirely clear, we must deem the decision to be reasonable if it 'is at least minimally consistent with the facts and circumstances of the case.'" (quoting Wright v. Angelone, 151 F.3d 151, 157 (4th Cir. 1998))).

"results," even despite flawed factual statements.[147] These are very high hurdles. Finally, the circuit has also applied a very restrictive interpretation of reasonable diligence[148] under § 2254(e)(2), which governs when a habeas petitioner is entitled to an evidentiary hearing,[149] and is the only circuit in the country to conclude that capital cases should be decided by federal courts under the expedited opt-in jurisdiction timelines even if the state cannot meet AEDPA's requirements for such consideration.[150]

V. CONCLUSION

The descriptive analysis of reasons why capital habeas petitioners virtually always lose in the Fourth Circuit, even if empirically correct, is still normatively debatable. As a normative matter, one might say that the hands off, deferential, and "all doubts resolved in favor of not disturbing the state court decision" approach is what federal courts are supposed to do in habeas corpus proceedings, especially given the restrictions on habeas review contained in AEDPA and some of the Supreme Court's habeas "reform" decisions.[151] Thus, one could argue that the Fourth Circuit, or at least the majority of judges on the circuit who subscribe to this view, have it exactly right. I must concede that this is a debatable point, one about which reasonable judges and academics can and do differ. It is also a matter of degree. Nevertheless, I do believe that a careful review of the Fourth Circuit's capital habeas decisions reveals that it has a more restrictive view of the nature and function of habeas corpus in capital cases than virtually any other circuit[152] and a more narrow, state-friendly approach to adjudicating constitutional claims in capital cases than the approach employed by the United States Supreme Court in cases where it has granted relief to death-sentenced inmates who raised claims similar to those discussed in this Essay.

This is not purely idle speculation. The United States Supreme Court has granted certiorari and reversed three decisions of the Fourth Circuit in recent years in cases where the circuit denied relief to a death-sentenced inmate. In two cases, *Wiggins v. Smith*[153] and (Terry) *Williams v. Taylor*,[154] the Supreme Court held that the Fourth Circuit erroneously adjudicated the death-sentenced

147. Frogge v. Branker, 286 F. App'x 51, 64–66 (4th Cir. 2008) (holding that state court decision was not "objectively unreasonable" and that state court's erroneous factual statements were not "ultimately necessary to its bottom-line conclusion").

148. *See* Williams v. Taylor, 189 F.3d 421, 426–427 (4th Cir. 1999), *aff'd in part, rev'd in part*, 529 U.S. 420 (2000).

149. 28 U.S.C. § 2254(e)(2) (2006).

150. Truesdale v. Moore, 142 F.3d 749, 758–60 (4th Cir. 1998).

151. For a more detailed discussion of Supreme Court and congressional efforts to limit the scope of federal habeas, see Blume, *supra* note 132.

152. *Id.* at 282 n.116.

153. 539 U.S. 510 (2003).

154. 529 U.S. 362 (2000).

inmate's ineffective assistance of counsel claim.[155] In (Michael) *Williams v. Taylor*,[156] a unanimous Supreme Court held that the Fourth Circuit erroneously applied the facts of the case to petitioner's request for an evidentiary hearing under 28 U.S.C. § 2254(e)(2).[157] Furthermore, it is not necessarily the case that any one of the doctrines, idiosyncratic methodologies, or glosses to Supreme Court precedent that I discussed previously explains the low success rate. Rather, it is the combined effect that makes it virtually impossible for a petitioner to prevail, which—at the end of the habeas day—explains the dismal success rate of capital habeas petitioners in the United States Court of Appeals for the Fourth Circuit.

Finally, let me suggest that—at least at a subconscious level—this may all be about the death penalty, or more specifically, judges' views about the wisdom and appropriateness of capital punishment. A judge who thinks that the death penalty generally is deserved in most death-eligible cases is more likely to find no prejudice when considering whether the presentation of additional mitigating evidence might have swayed the jury to choose life over death or to look for other bases on which to affirm. On the other hand, a judge who thinks that the death penalty should be imposed rarely may take a different view as to the presence of error or the effect of errors on outcomes. While legal realism is a bit out of fashion in academia these days—primarily because everyone now is, truth be told, a legal realist—it almost could not help but be the case that all of our views about society's ultimate punishment will influence how we think the machinery of death is working.

155. *See Wiggins*, 539 U.S. at 519; *Williams*, 529 U.S. at 367.

156. 529 U.S. 420 (2000).

157. *See id.* at 440–43 (concluding that on two of petitioner's three claims, the Fourth Circuit erroneously held under § 2254(e)(2) that petitioner failed to exercise diligence in developing the factual basis for his claims).

APPENDIX A

THE FOURTH CIRCUIT CAPITAL HABEAS CASES IN THE MODERN ERA (THROUGH OCTOBER 2009)[158]

Name of Case	Sitting Judges	Opinion	Comments
Hooks v. Branker, No. 08-12, 2009 WL 3403315 (4th Cir. Oct. 23, 2009)	Niemeyer Michael King	author unanimous	denial of relief affirmed
Stephens v. Branker, 570 F.3d 198 (4th Cir. 2009)	King Shedd Agee	author unanimous	denial of relief affirmed
Hyatt v. Branker, 569 F.3d 162 (4th Cir. 2009)	Motz Niemeyer Traxler	author unanimous	denial of relief affirmed
Wolfe v. Johnson, 565 F.3d 140 (4th Cir. 2009)	King Shedd Duncan	author unanimous	denial of relief affirmed in part; case remanded for an evidentiary hearing, resolution of a *Schlup* issue, and examination of *Brady* and *Giglio* claims

158. Because this chart includes all decisions in capital cases, some cases will appear more than once. For example, cases in which panel decisions were later revisited on rehearing or rehearing en banc will result in entries for the panel decision as well as entries for any subsequent decisions.

Name of Case	Sitting Judges	Opinion	Comments
Powell v. Kelly, 562 F.3d 656 (4th Cir. 2009)	Shedd Motz Gregory	author majority concurring in part; dissenting in part	denial of relief affirmed
Blakeney v. Branker, 314 F. App'x 572 (4th Cir. 2009)	King Michael Gregory	author majority concurring in part; dissenting in part	denial of relief affirmed
Davis v. Branker, 305 F. App'x 926 (4th Cir. 2009)	Traxler King Hamilton	author unanimous	denial of relief affirmed
Larry v. Branker, 552 F.3d 356 (4th Cir. 2009)	Shedd Traxler Hamilton	author unanimous	denial of relief affirmed
Ivey v. Ozmint, 304 F. App'x 144 (4th Cir. 2008)	Agee Niemeyer Traxler	author unanimous	denial of relief affirmed
Moseley v. Branker, 550 F.3d 312 (4th Cir. 2008)	Traxler Shedd Duncan	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Cole v. Branker, 328 F. App'x 149 (4th Cir. 2008)	Michael Wilkinson Shedd	author unanimous	denial of relief affirmed
Frogge v. Branker, 286 F. App'x 51 (4th Cir. 2008)	Niemeyer King Gregory	per curiam dissenting	denial of relief affirmed
Hyde v. Branker, 286 F. App'x 822 (4th Cir. 2008)	Wilkinson Niemeyer Motz	per curiam	denial of relief affirmed
Strickland v. Branker, 284 F. App'x 57 (4th Cir. 2008)	Michael Williams Motz	author unanimous	denial of relief affirmed
Gray v. Branker, 529 F.3d 220 (4th Cir. 2008)	Michael Gregory Duncan	author majority concurring in part; dissenting in part	denial of relief reversed; sentencing-phase relief granted
Jackson v. Johnson, 523 F.3d 273 (4th Cir. 2008)	Williams Niemeyer Duncan	author unanimous	denial of relief affirmed
Yarbrough v. Johnson, 520 F.3d 329 (4th Cir. 2008)	Niemeyer Traxler Hamilton	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Cagle v. Branker, 520 F.3d 320 (4th Cir. 2008)	Wilkinson Michael King	author unanimous	denial of relief affirmed
Golphin v. Branker, 519 F.3d 168 (4th Cir. 2008)	Williams Wilkinson Michael	author unanimous	denial of relief affirmed
Lawrence v. Branker, 517 F.3d 700 (4th Cir. 2008)	Williams Motz King	author unanimous	grant of penalty-phase relief reversed; denial of relief on other issues affirmed
Green v. Johnson, 515 F.3d 290 (4th Cir. 2008)	Shedd Wilkinson Motz	author majority concurring	denial of relief affirmed
Bowie v. Branker, 512 F.3d 112 (4th Cir. 2008)	Duncan Michael King	author unanimous	denial of relief affirmed
Gardner v. Ozmint, 511 F.3d 420 (4th Cir. 2007)	Motz Wilkinson Gregory	author unanimous	denial of relief affirmed
Call v. Branker, 254 F. App'x 257 (4th Cir. 2007)	Traxler King Legg (D. Md.)	per curiam	denial of relief affirmed
Meyer v. Branker, 506 F.3d 358 (4th Cir. 2007)	Wilkinson Niemeyer Shedd	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Moses v. Branker, No. 06-8, 2007 WL 3083548 (4th Cir. Oct. 23, 2007)	Michael Motz Anderson (D.S.C.)	author unanimous	denial of relief affirmed
Williams v. Ozmint, 494 F.3d 478 (4th Cir. 2007)	Michael Niemeyer Wilkins	author unanimous	grant of penalty-phase relief reversed; denial of guilt-phase relief affirmed
Hill v. Polk, 230 F. App'x 285 (4th Cir. 2007)	Wilkinson Gregory Duncan	per curiam	denial of relief affirmed
McNeill v. Polk, 476 F.3d 206 (4th Cir. 2007)	Shedd King Gregory	author concurring in part concurring in part; dissenting in part	denial of relief affirmed
Wilkinson v. Polk, 2007 WL 1051436 (4th Cir. April 5, 2007)	Wilkins Traxler Gregory	author unanimous	denial of relief affirmed
Cummings v. Polk, 475 F.3d 230 (4th Cir. 2007)	King Niemeyer Williams	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Emmett v. Kelly, 474 F.3d 154 (4th Cir. 2007)	Traxler Shedd Gregory	author majority concurring in part; dissenting in part	denial of relief affirmed
Shuler v. Ozmint, 209 F. App'x 224 (4th Cir. 2006)	Wilkins Widener Duncan	author unanimous	denial of relief affirmed
Lynch v. Polk, 204 F. App'x 167 (4th Cir. 2006)	Michael Niemeyer Motz	author unanimous	denial of relief affirmed
Stroud v. Polk, 466 F.3d 291 (4th Cir. 2006)	Motz Wilkinson Traxler	author unanimous	denial of relief affirmed
Walker v. Kelly, 195 F. App'x 169 (4th Cir. 2006)	Floyd (D.S.C.) Gregory Williams	author concurring dissenting	denial of relief vacated; case remanded for evidentiary hearing
Daughtry v. Polk, 190 F. App'x 262 (4th Cir. 2006)	Wilkins Shedd Hamilton	per curiam	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Schmitt v. Kelly, 189 F. App'x 257 (4th Cir. 2006)	Williams Michael Hamilton	per curiam	denial of relief affirmed
Conaway v. Polk, 453 F.3d 567 (4th Cir. 2006)	King Duncan Widener	author majority concurring	denial of relief affirmed in part; remanded in part for evidentiary hearing
Buckner v. Polk, 453 F.3d 195 (4th Cir. 2006)	Duncan Shedd Gregory	author majority concurring in part; dissenting in part	denial of relief affirmed
Campbell v. Polk, 447 F.3d 270 (4th Cir. 2006)	Wilkinson Hamilton Michael	author majority concurring in part	denial of relief affirmed
Lenz v. Washington, 444 F.3d 295 (4th Cir. 2006)	Wilkinson Wilkins Luttig	author unanimous	denial of relief affirmed
Hedrick v. True, 443 F.3d 342 (4th Cir. 2006)	Gregory Widener Hamilton	author of Parts I–III; dissent of Part IV; concur of Part V joined Gregory author of Parts IV–V	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Billings v. Polk, 441 F.3d 238 (4th Cir. 2006)	Luttig Wilkinson Michael	author unanimous	denial of relief affirmed
Walton v. Johnson, 440 F.3d 160 (4th Cir. 2006) (en banc)	Shedd Widener Wilkinson Niemeyer Luttig Williams Duncan Wilkins Michael Motz Traxler King Gregory	author majority majority; wrote separately concurring in the judgment majority majority majority; wrote separately concurring in the judgment majority dissenting joined Wilkins joined Wilkins joined Wilkins joined Wilkins joined Wilkins	panel's reversal of denial of relief vacated; district court's denial of relief affirmed
Robinson v. Polk, 438 F.3d 350 (4th Cir. 2006)	Williams Shedd King	author majority dissenting in part	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Vinson v. True, 436 F.3d 412 (4th Cir. 2005)	Motz Widener Duncan	author unanimous	denial of relief affirmed
Brown v. Polk, 135 F. App'x 618 (4th Cir. 2005)	Traxler Luttig Michael	author unanimous	denial of relief affirmed
Moody v. Polk, 408 F.3d 141 (4th Cir. 2005)	Luttig Wilkinson Traxler	author majority concurring	denial of relief affirmed
Conner v. Polk, 407 F.3d 198 (4th Cir. 2005)	King Shedd Luttig	author majority dissenting	denial of relief affirmed
Walton v. Johnson, 407 F.3d 285 (4th Cir. 2005), *vacated on reh'g en banc*, 440 F.3d 160 (4th Cir. 2006)	Motz Wilkins Shedd	author majority dissenting	denial of relief vacated; case remanded for evidentiary hearing on mental retardation claim
Simpson v. Polk, 129 F. App'x 782 (4th Cir. 2005)	Traxler Motz Gregory	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Lovitt v. True, 403 F.3d 171 (4th Cir. 2005)	Wilkinson Williams Traxler	author unanimous	denial of relief affirmed
Walker v. True, 401 F.3d 574 (4th Cir. 2005), *vacated*, 546 U.S. 1086 (2006) (unpublished table decision)	Luttig Williams Gregory	author majority dissenting	denial of relief affirmed
Jones v. Polk, 401 F.3d 257 (4th Cir. 2005)	Motz Widener Michael	author majority concurring	denial of relief affirmed
Walker v. True, 399 F.3d 315 (4th Cir. 2005)	Luttig Broadwater (N.D.W. Va.) Gregory	author majority concurring in part, dissenting in part	denial of relief vacated; case remanded for evidentiary hearing on mental retardation claim

Name of Case	Sitting Judges	Opinion	Comments
Humphries v. Ozmint, 397 F.3d 206 (4th Cir. 2005) (en banc)	Hamilton Wilkins Widener Niemeyer Luttig Williams Motz Traxler King Shedd Wilkinson Michael Gregory Duncan	author majority majority majority majority majority majority majority majority majority dissenting joined Wilkinson joined Wilkinson joined Wilkinson	denial of relief affirmed
McHone v. Polk, 392 F.3d 691 (4th Cir. 2004)	Luttig Wilkins Gregory	author majority concurring in part; dissenting in part	denial of relief affirmed
Syriani v. Polk, 118 F. App'x 706 (4th Cir. 2004)	Traxler Niemeyer Shedd	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Kandies v. Polk, 385 F.3d 457 (4th Cir. 2004), *vacated mem.*, 545 U.S. 1137 (2005)	Gregory Michael Traxler	announcing judgment of the court and writing separately concurring in the judgment concurring in the judgment	denial of relief affirmed
Longworth v. Ozmint, 377 F.3d 437 (4th Cir. 2004)	Niemeyer Michael Gregory	author unanimous	denial of relief affirmed
Richmond v. Polk, 375 F.3d 309 (4th Cir. 2004)	Gregory Wilkinson King	author unanimous	denial of relief affirmed
Humphries v. Ozmint, 366 F.3d 266 (4th Cir. 2004), *vacated on reh'g en banc*, 397 F.3d 206 (4th Cir. 2005) (affirming district court's dismissal of habeas petition)	Wilkinson Duncan Hamilton	author majority concurring in part; dissenting in part	denial of relief reversed in part, affirmed in part; case remanded for issuance of writ as to sentence only

Name of Case	Sitting Judges	Opinion	Comments
Allen v. Lee, 366 F.3d 319 (4th Cir. 2004) (en banc)	Wilkins Michael Motz Traxler King Gregory Shedd Niemeyer Wilkinson Luttig Williams	per curiam	denial of relief on *McKoy* claim reversed; denial of relief on remaining grounds affirmed
Bailey v. True, 100 F. App'x 128 (4th Cir. 2004)	Niemeyer Luttig Williams	per curiam	dismissal of petition affirmed
Chandler v. Lee, 89 F. App'x 830 (4th Cir. 2004)	Wilkins Widener Shedd	author unanimous	denial of relief affirmed
Wilson v. Ozmint, 352 F.3d 847 (4th Cir. 2003)	Luttig Wilkins Widener	author unanimous	grant of relief vacated
Orbe v. True, 82 F. App'x 802 (4th Cir. 2003)	Williams Traxler Hamilton	per curiam	dismissal of petition affirmed

Name of Case	Sitting Judges	Opinion	Comments
Tucker v. Ozmint, 350 F.3d 433 (4th Cir. 2003)	Shedd Michael Motz	author unanimous	denial of relief affirmed
Reid v. True, 349 F.3d 788 (4th Cir. 2003)	Wilkins Gregory Shedd	author unanimous	denial of relief affirmed
Rouse v. Lee, 339 F.3d 238 (4th Cir. 2003) (en banc)	Williams Wilkins Widener Wilkinson Niemeyer Traxler Shedd Motz Michael King Gregory	author majority majority majority majority majority dissenting joined Motz joined Motz joined Motz	dismissal of habeas petition as untimely affirmed
Byram v. Ozmint, 339 F.3d 203 (4th Cir. 2003)	Wilkinson Widener Niemeyer	author unanimous	denial of relief affirmed
Hill v. Ozmint, 339 F.3d 187 (4th Cir. 2003)	King Michael Motz	author unanimous	denial of relief affirmed
Perkins v. Lee, 72 F. App'x 4 (4th Cir. 2003)	Traxler Michael King	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Bell v. Ozmint, 332 F.3d 229 (4th Cir. 2003)	Motz Wilkins Wilkinson	author unanimous	denial of relief affirmed
Walker v. True, 67 F. App'x 758 (4th Cir. 2003), *vacated mem.* 540 U.S. 1013 (2003)	Luttig Williams Gregory	per curiam	certificate of appealability (COA) granted in part; dismissal of petition affirmed
Rowsey v. Lee, 327 F.3d 335 (4th Cir. 2003)	Wilkinson Widener Niemeyer	author unanimous	COA granted in part; denial of relief affirmed
Swisher v. True, 325 F.3d 225 (4th Cir. 2003)	Williams Luttig Hamilton	author unanimous	COA denied; appeal dismissed
Walton v. Angelone, 321 F.3d 442 (4th Cir. 2003)	Hamilton Wilkins Motz	author unanimous	COA denied; appeal dismissed
Brown v. Lee, 319 F.3d 162 (4th Cir. 2003)	Traxler Luttig Michael	author unanimous	appeal dismissed in part; reversed in part; and remanded for merits review of one claim
Allen v. Lee, 319 F.3d 645 (4th Cir. 2003), *vacated on reh'g en banc*, 366 F.3d 319	Gregory Motz Niemeyer	author majority dissenting	denial of relief reversed

Name of Case	Sitting Judges	Opinion	Comments
Lyons v. Lee, 316 F.3d 528 (4th Cir. 2003)	Williams Luttig Gregory	author majority concurring	COA denied; appeal dismissed
Daniels v. Lee, 316 F.3d 477 (4th Cir. 2003)	King Wilkinson Widener	author unanimous	COA denied; appeal dismissed
Bramblett v. True, 59 F. App'x 1 (4th Cir. 2003)	Wilkins Traxler Michael	author majority dissenting	dismissal of petition affirmed in part; appeal dismissed in part
Rouse v. Lee, 314 F.3d 698 (4th Cir. 2003), *vacated on reh'g en banc*, 339 F.3d 238 (4th Cir. 2003)	Motz King Williams	author majority dissenting	dismissal of petition as untimely vacated; case remanded
Jones v. Cooper, 311 F.3d 306 (4th Cir. 2002)	Luttig Widener Williams	author unanimous	COA denied; appeal dismissed
Bates v. Lee, 308 F.3d 411 (4th Cir. 2002)	Wilkinson Widener Hamilton	author unanimous	dismissal of petition affirmed

Name of Case	Sitting Judges	Opinion	Comments
Kasi v. Angelone, 300 F.3d 487 (4th Cir. 2002)	Traxler Wilkins King	author unanimous	COA denied; appeal dismissed
Williams v. True, 39 F. App'x 830 (4th Cir. 2002)	Wilkinson Niemeyer Williams	per curiam	grant of relief affirmed
Hunt v. Lee, 291 F.3d 284 (4th Cir. 2002)	Niemeyer King Gregory	author unanimous	denial of relief affirmed
Fullwood v. Lee, 290 F.3d 663 (4th Cir. 2002)	Traxler Michael Widener	author majority concurring in part; dissenting in part	denial of relief affirmed in part and reversed in part; remanded for evidentiary hearing on two claims of juror misconduct
Basden v. Lee, 290 F.3d 602 (4th Cir. 2002)	Motz Wilkinson Gregory	author unanimous	denial of relief affirmed
Wiggins v. Corcoran, 288 F.3d 629 (4th Cir. 2002), *rev'd sub nom. Wiggins v. Smith*, 539 U.S. 510 (2003)	Widener Wilkinson Niemeyer	author concurring concurring	grants of guilt-phase relief for insufficient evidence and sentencing-phase relief for ineffective assistance of counsel (IAC) reversed

Name of Case	Sitting Judges	Opinion	Comments
Ivey v. Catoe, 36 F. App'x 718 (4th Cir. 2002)	Wilkins Widener Niemeyer	author unanimous	COA denied; appeal dismissed
Booth-El v. Nuth, 288 F.3d 571 (4th Cir. 2002)	Wilkinson Wilkins Gregory	author unanimous	grant of sentencing-phase relief reversed; denial of guilt-phase relief affirmed
Carter v. Lee, 283 F.3d 240 (4th Cir. 2002)	King Motz Gregory	author unanimous	COA denied; appeal dismissed
Hartman v. Lee, 283 F.3d 190 (4th Cir. 2002)	Wilkins Wilkinson Michael	author unanimous	denial of relief affirmed
McWee v. Weldon, 283 F.3d 179 (4th Cir. 2002)	Luttig Michael King	author unanimous	COA denied; appeal dismissed
Burch v. Corcoran, 273 F.3d 577 (4th Cir. 2001)	King Wilkinson Niemeyer	author unanimous	denial of relief affirmed
Beck v. Angelone, 261 F.3d 377 (4th Cir. 2001)	Hamilton Widener Motz	author unanimous	COA denied; appeal dismissed

Name of Case	Sitting Judges	Opinion	Comments
Jones v. Catoe, 9 F. App'x 245 (4th Cir. 2001)	Wilkins Niemeyer Luttig	author unanimous	denial of relief affirmed
Rose v. Lee, 252 F.3d 676 (4th Cir. 2001)	Williams Michael Traxler	author unanimous	grant of sentencing-phase relief reversed; COA denied on petitioner's cross-appeal
Mickens v. Taylor, 240 F.3d 348 (4th Cir. 2001) (en banc), *aff'd*, 535 U.S. 162 (2002)	Widener Wilkinson Wilkins Niemeyer Luttig Williams Traxler Michael Motz King	author majority majority majority majority majority majority dissenting joined Michael joined Michael	panel's reversal of denial of relief vacated; district court's denial of relief affirmed
Frye v. Lee, 235 F.3d 897 (4th Cir. 2000)	King Wilkinson Motz	author unanimous	COA denied; appeal dismissed
Skipper v. Lee, No. 00-8, 2000 WL 1853330 (4th Cir. Dec. 19, 2000)	Williams Widener Michael	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
White v. Lee, No. 00-3, 2000 WL 1803290 (4th Cir. Dec. 8, 2000)	Traxler Niemeyer Stamp (N.D.W. Va.)	author unanimous	denial of relief affirmed
Mickens v. Taylor, 227 F.3d 203 (4th Cir. 2000), *vacated on reh'g en banc*, 240 F.3d 348 (4th Cir. 2001) (en banc), *aff'd*, 535 U.S. 162 (2002)	Michael Motz Widener	author majority dissenting	denial of guilt-phase relief reversed
Goins v. Angelone, 226 F.3d 312 (4th Cir. 2000), *overruled by Bell v. Jarvis*, 236 F.3d 149 (4th Cir. 2000)	King Luttig Traxler	author unanimous	COA denied; appeal dismissed
Bacon v. Lee, 225 F.3d 470 (4th Cir. 2000)	Niemeyer Traxler King	author majority concurring in part; dissenting in part	grant of sentencing-phase relief reversed; district court's denial of guilt-phase relief affirmed
Fisher v. Lee, 215 F.3d 438 (4th Cir. 2000)	Traxler Widener Goodwin (S.D.W. Va.)	author unanimous	COA denied; appeal dismissed

Name of Case	Sitting Judges	Opinion	Comments
Graham v. Angelone, No. 99-4, 1999 WL 710385 (4th Cir. Sept. 13, 1999)	Traxler Widener Niemeyer	author unanimous	grant of partial COA affirmed; COA on remaining claims denied; appeal dismissed
Royal v. Taylor, 188 F.3d 239 (4th Cir. 1999)	Motz Luttig Michael	author unanimous	dismissal of petition affirmed
Ramdass v. Angelone, 187 F.3d 396 (4th Cir. 1999), *aff'd*, 530 U.S. 156 (2000)	Widener Niemeyer Murnaghan	author majority concurring in part; dissenting in part	grant of sentencing-phase relief reversed; denial of guilt-phase relief affirmed
Williams v. Taylor, 189 F.3d 421 (4th Cir. 1999), *aff'd in part, rev'd in part*, 529 U.S. 420 (2000)	Wilkinson Hamilton Williams	author unanimous	denial of relief affirmed
Harris v. French, No. 98-34, 1999 WL 496941 (4th Cir. July 14, 1999), *abrogated by McCarver v. Lee*, 221 F.3d 583 (4th Cir. 2000)	Ervin Hamilton Williams	per curiam	denial of relief affirmed
Joseph v. Angelone, 184 F.3d 320 (4th Cir. 1999)	Widener Murnaghan Motz	author unanimous	COA denied; appeal dismissed

Name of Case	Sitting Judges	Opinion	Comments
Colvin-El v. Nuth, Nos. 98-27, 98-29, 1999 WL 436776 (4th Cir. June 17, 1999)	Niemeyer Wilkinson Michael	author unanimous	grant of sentencing-phase relief reversed; denial of guilt-phase relief affirmed
Mueller v. Angelone, 181 F.3d 557 (4th Cir. 1999)	Luttig Motz Traxler	author unanimous	COA denied; appeal dismissed
Weeks v. Angelone, 176 F.3d 249 (4th Cir 1999)	Williams Wilkinson Hamilton	author unanimous	COA denied; petition dismissed
Roach v. Angelone, 176 F.3d 210 (4th Cir. 1999)	King Widener Niemeyer	author unanimous	COA denied; appeal dismissed.
Williams v. Angelone, No. 98-29, 1999 WL 249026 (4th Cir. Apr. 29, 1999)	Wilkins Traxler Faber (S.D.W. Va.)	author unanimous	denial of relief affirmed
Thomas v. Taylor, 170 F.3d 466 (4th Cir. 1999)	Luttig Ervin King	author unanimous	COA denied; appeal dismissed

Name of Case	Sitting Judges	Opinion	Comments
Rocheville v. Moore, No. 98-23, 1999 WL 140668 (4th Cir. Mar. 16, 1999)	Wilkins Michael Traxler	per curiam	COA denied; appeal dismissed
Swann v. Taylor, No. 98-20, 1999 WL 92435 (4th Cir. Feb. 18, 1999)	Traxler Michael Butzner	author unanimous	denial of relief affirmed in part; district court's denial of claim relating to competency to be executed vacated and remanded with instructions to dismiss without prejudice
Jenkins v. Angelone, No. 98-13, 1999 WL 9944 (4th Cir. Jan. 12, 1999)	Niemeyer Ervin Butzner	author unanimous	grants of COAs on two claims affirmed; COAs on two other claims denied, and corresponding claims dismissed
Yeatts v. Angelone, 166 F.3d 255 (4th Cir. 1999)	Wilkins Luttig Hamilton	author majority concurring in part; concurring in the judgment	certificate of probable cause (CPC) denied; appeal dismissed
Drayton v. Moore, No. 98-18, 1999 WL 10073 (4th Cir. Jan. 12, 1999)	Hamilton Michael Murnaghan	per curiam dissenting	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Chichester v. Taylor, No. 98-15, 1999 WL 3736 (4th Cir. Jan. 6, 1999)	Wilkinson Luttig Motz	per curiam	COA denied; appeal dismissed
Sexton v. French, 163 F.3d 874 (4th Cir. 1998)	Hamilton Wilkinson Motz	author unanimous	denial of relief affirmed
Williams v. Taylor, 163 F.3d 860 (4th Cir. 1998), *rev'd*, 592 U.S. 362 (2000)	Williams Widener Michael	author unanimous	grant of sentencing-phase relief reversed; denial of relief on all other claims affirmed
Fisher v. Angelone, 163 F.3d 835 (4th Cir. 1998)	Williams Widener Luttig	author unanimous	CPC denied; appeal dismissed
Keel v. French, 162 F.3d 263 (4th Cir. 1998)	Murnaghan Williams Motz	author unanimous	denial of relief affirmed
Quesinberry v. Taylor, 162 F.3d 273 (4th Cir. 1998)	Butzner Niemeyer Motz	author unanimous	denial of relief affirmed
Fry v. Angelone, No. 98-8, 1998 WL 746859 (4th Cir. Oct. 26, 1998)	Wilkins Murnaghan Luttig	author unanimous	COA denied; appeal dismissed

Name of Case	Sitting Judges	Opinion	Comments
Sheppard v. Taylor, No. 98-12, 1998 WL 743663 (4th Cir. Oct. 23, 1998)	Wilkins Wilkinson Niemeyer	author unanimous	denial of relief affirmed
Ward v. French, No. 98-7, 1998 WL 743664 (4th Cir. Oct. 23, 1998)	Wilkins Niemeyer Michael	author unanimous	denial of relief affirmed
Johnson v. Moore, Nos. 97-33, 97-7801, 1998 WL 708691 (4th Cir. Sept. 24, 1998)	Wilkins Williams Ervin	author majority concurring in part; dissenting in part	denial of relief affirmed
Wilson v. Greene, 155 F.3d 396 (4th Cir. 1998)	Wilkinson Niemeyer Michael	author majority concurring in part; concurring in the judgment	denial of relief affirmed
Cardwell v. Greene, 152 F.3d 331 (4th Cir. 1998), *overruled by Bell v. Jarvis*, 236 F.3d 149 (4th Cir. 2000)	Murnaghan Widener Michael	author unanimous	denial of relief affirmed
Wright v. Angelone, 151 F.3d 151 (4th Cir. 1998)	Williams Michael	author unanimous (quorum)	COA denied; appeal dismissed

Name of Case	Sitting Judges	Opinion	Comments
Fitzgerald v. Greene, 150 F.3d 357 (4th Cir. 1998)	Williams Widener Hamilton	author unanimous	COA denied; appeal dismissed
Boyd v. French, 147 F.3d 319 (4th Cir. 1998)	Wilkins Ervin Murnaghan	author majority concurring	denial of relief affirmed
Strickler v. Pruett, Nos. 97-29, 97-30, 1998 WL 340420 (4th Cir. June 17, 1998)	Niemeyer Hamilton Luttig	per curiam writing separately	grant of guilt-phase relief reversed; denial of relief on remaining claims affirmed
Brown v. French, 147 F.3d 307 (4th Cir. 1998)	Ervin Murnaghan Moon (W.D.Va.)	author unanimous	denial of relief affirmed
Stewart v. Angelone, No. 97-26, 1998 WL 276291 (4th Cir. May 29, 1998)	Widener Hamilton Motz	per curiam	dismissal of petition affirmed
Dubois v. Greene, No. 97-21, 1998 WL 276282 (4th Cir. May 26, 1998)	Wilkins Luttig Motz	per curiam	COA denied; appeal dismissed
Chandler v. Greene, No. 97-27, 1998 WL 279344 (4th Cir. May 20, 1998)	Niemeyer Wilkinson Widener	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Williams v. French, 146 F.3d 203 (4th Cir. 1998)	Hamilton Butzner Moon (W.D.Va.)	author unanimous	denial of relief affirmed
Green v. French, 143 F.3d 865 (4th Cir. 1998), *overruled by Williams v. Taylor*, 529 U.S. 362 (2000)	Luttig Butzner Ervin	author majority concurring	dismissal of petition affirmed
Truesdale v. Moore, 142 F.3d 749 (4th Cir. 1998)	Wilkinson Williams Michael	author unanimous	denial of relief affirmed
King v. Greene, No. 07-28, 1998 WL 183909 (4th Cir. April 20, 1998)	Widener Motz Clarke (E.D. Va.)	per curiam	denial of relief affirmed
Eaton v. Angelone, 139 F.3d 990 (4th Cir. 1998)	Wilkinson Hamilton Michael	author unanimous	denial of relief affirmed
Roberts v. Moore, No. 97-12, 1998 WL 41683 (4th Cir. Feb. 4, 1998)	Wilkins Niemeyer Williams	author unanimous	CPC denied; appeal dismissed
Smith v. Moore, 137 F.3d 808 (4th Cir. 1998)	Williams Luttig Motz	author majority concurring	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Atkins v. Moore, No. 97-17, 1998 WL 93409 (4th Cir. Mar. 5, 1998)	Wilkins Russell (present at oral argument but died prior to decision) Widener	author unanimous (quorum)	denial of relief affirmed
Arnold v. Evatt, 113 F.3d 1352 (4th Cir. 1997)	Russell Niemeyer Motz	author unanimous	denial of relief affirmed
Breard v. Pruett, 134 F.3d 615 (4th Cir. 1998)	Hamilton Williams Butzner	author majority concurring	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Gilbert v. Moore, 134 F.3d 642 (4th Cir. 1998) (en banc)	Wilkins Wilkinson Widener Murnaghan Ervin Niemeyer Luttig Williams Hamilton Michael Motz	author majority majority majority majority majority majority majority concurring in part; concurring in the judgment concurring in part; concurring in the judgment concurring in part; concurring in the judgment	panel affirmance of district court's grant of relief vacated; district court's grant of relief reversed
Gilliam v. Simms, No. 97-14, 1998 WL 17041 (4th Cir. Jan. 13, 1998)	Niemeyer Murnaghan Hamilton	author unanimous	denial of relief affirmed
Noland v. French, 134 F.3d 208 (4th Cir. 1998)	Ervin Hamilton Luttig	author unanimous	denial of guilt-phase relief affirmed; grant of sentencing-phase relief reversed
Watkins v. Angelone, No. 97-9, 1998 WL 2861 (4th Cir. Jan. 7, 1998)	Michael Butzner Bullock (M.D.N.C.)	per curiam	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Mackall v. Angelone, 131 F.3d 442 (4th Cir. 1997) (en banc)	Wilkins Wilkinson Russell Widener Niemeyer Hamilton Luttig Williams Michael Motz Butzner Murnaghan	author majority majority majority majority majority majority majority majority majority dissenting joined Butzner	denial of relief affirmed
Howard v. Moore, 131 F.3d 399 (4th Cir. 1997) (en banc)	Williams Wilkinson Russell Widener Wilkins Niemeyer Hamilton Luttig Michael Hall Murnaghan Motz	author majority majority majority majority majority majority majority dissenting joined Michael joined Michael joined Michael	denial of relief affirmed
Skipper v. French, 130 F.3d 603 (4th Cir. 1997)	Phillips Widener Michael	author unanimous	district court's procedural-default dismissal vacated; remand for merits review
Plath v. Moore, 130 F.3d 595 (4th Cir. 1997)	Russell Niemeyer Motz	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Beavers v. Pruett, No. 97-4, 1997 WL 585739 (4th Cir. Sept 23, 1997)	Wilkins Luttig Williams	author unanimous	CPC denied; appeal dismissed
Satcher v. Pruett, 126 F.3d 561 (4th Cir. 1997)	Michael Widener Wilkins	author unanimous	grant of relief reversed
Mu'min v. Pruett, 125 F.3d 192 (4th Cir. 1997)	Wilkins Wilkinson Motz	author unanimous	dismissal of petition affirmed
Matthews v. Evatt, 105 F.3d 907 (4th Cir. 1997)	Hamilton Widener Phillips	author unanimous	denial of relief affirmed
Gilbert v. Moore, 121 F.3d 144 (4th Cir. 1997), *vacated on reh'g en banc*, 134 F.3d 642 (1998)	Russell Murnaghan Motz	author unanimous	grant of relief affirmed
Murphy v. Netherland, 116 F.3d 97 (4th Cir. 1997)	Luttig Niemeyer Michael	author unanimous	COA denied; appeal dismissed
Pope v. Netherland, 113 F.3d 1364 (4th Cir. 1997)	Butzner Hall Wilkinson	author majority concurring	grant of relief reversed

Name of Case	Sitting Judges	Opinion	Comments
Smith v. Angelone, 111 F.3d 1126 (4th Cir. 1997)	Motz Niemeyer Luttig	author unanimous	denial of relief affirmed
Mackall v. Murray, 109 F.3d 957 (4th Cir. 1997), *vacated on reh'g en banc sub nom. Mackall v. Angelone*, 131 F.3d 442 (4th Cir. 1997)	Ervin Murnaghan Butzner	author unanimous	dismissal of petition affirmed in part, reversed in part, and remanded in part
Buchanan v. Angelone, 103 F.3d 344 (4th Cir. 1996)	Butzner Hall Ervin	author unanimous	denial of relief affirmed
George v. Angelone, 100 F.3d 353 (4th Cir. 1996)	Wilkins Wilkinson Williams	author unanimous	dismissal of petition affirmed and modified to provide for dismissal with prejudice
Beaver v. Netherland, 101 F.3d 977 (4th Cir. 1996)	Widener Luttig Hall	author concurring in part; dissenting in part concurring in part; dissenting in part	stay of mandate extended; stay of execution denied

Name of Case	Sitting Judges	Opinion	Comments
Gray v. Netherland, 99 F.3d 158 (4th Cir. 1996)	Wilkinson Hall Wilkins	author unanimous	case remanded for dismissal of petition (on remand from Supreme Court following vacatur of court of appeals' decision reversing grant of sentencing-phase relief)
O'Dell v. Netherland, 95 F.3d 1214 (4th Cir. 1996) (en banc)	Luttig Wilkinson Russell Widener Wilkins Niemeyer Williams Ervin Hall Murnaghan Hamilton Michael Motz	author majority majority majority majority majority majority concurring in part; dissenting in part joined Ervin joined Ervin joined Ervin joined Ervin joined Ervin	grant of sentencing-phase relief reversed; denial of guilt-phase relief affirmed
Stout v. Netherland, Nos. 95-4008, 95-4007, 1996 WL 496601 (4th Cir. Sept. 3, 1996)	Wilkinson Hamilton Williams	per curiam	grants of relief from capital murder guilty plea and death sentence reversed; case remanded with instructions to reinstate death sentence
Beaver v. Thompson, 93 F.3d 1186 (4th Cir. 1996)	Widener Luttig Hall	author majority dissenting	dismissal of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Hoke v. Netherland, 92 F.3d 1350 (4th Cir. 1996)	Luttig Russell Hall	author majority dissenting	grant of relief reversed
Bennett v. Angelone, 92 F.3d 1336 (4th Cir. 1996)	Phillips Widener Motz	author unanimous	dismissal of petition affirmed
Payne v. Netherland, No. 95-4016, 1996 WL 467642 (4th Cir. Aug. 19, 1996)	Wilkins Widener Michael	author majority concurring	denial of relief affirmed
Savino v. Murray, 82 F.3d 593 (4th Cir. 1996)	Murnaghan Luttig Williams	author unanimous	dismissal of petition affirmed
Tuggle v. Netherland, 79 F.3d 1386 (4th Cir. 1996)	Hamilton Widener Chapman	author unanimous	case remanded for dismissal of petition (on remand from Supreme Court following vacatur of court of appeals' decision reversing grant of sentencing-phase relief)
Middleton v. Evatt, No. 94-4015, 1996 WL 63038 (4th Cir. Feb 14, 1996)	Wilkins Niemeyer Williams	per curiam	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Townes v. Angelone, 73 F.3d 545 (4th Cir. 1996)	Niemeyer Luttig Phillips	per curiam	denial of relief affirmed
Bell v. Evatt, 72 F.3d 421 (4th Cir. 1995)	Russell Michael Motz	author unanimous	denial of relief affirmed
Townes v. Murray, 68 F.3d 840 (4th Cir. 1995)	Phillips Niemeyer Luttig	author majority concurring	dismissal of petition affirmed
Kornahrens v. Evatt, 66 F.3d 1350 (4th Cir. 1995)	Williams Hamilton Motz	author majority concurring	denial of relief affirmed
Thomas-Bey v. Nuth, Nos. 95-4000, 95-4001, 1995 WL 561296 (4th Cir. Sept. 22, 1995)	Hall Murnaghan Butzner	per curiam	grant of sentencing-phase relief and denial of guilt-phase relief affirmed
Correll v. Thompson, 63 F.3d 1279 (4th Cir. 1995)	Wilkins Wilkinson Phillips	author unanimous	grant of guilt-phase relief reversed
Tuggle v. Thompson, 57 F.3d 1356 (4th Cir. 1995), *vacated sub nom. Tuggle v. Netherland*, 516 U.S. 10 (1995)	Chapman Widener Hamilton	author unanimous	grant of sentencing-phase relief reversed

Name of Case	Sitting Judges	Opinion	Comments
Barnes v. Thompson, 58 F.3d 971 (4th Cir. 1995)	Luttig Williams Murnaghan	author majority concurring	grant of sentencing-phase relief reversed
Gray v. Thompson, 58 F.3d 59 (4th Cir. 1995)	Wilkinson Wilkins Hall	author majority concurring	grant of sentencing-phase relief reversed
Hunt v. Nuth, 57 F.3d 1327 (4th Cir. 1995)	Russell Murnaghan Williams	author unanimous	denial of relief affirmed
Turner v. Jabe, 58 F.3d 924 (4th Cir. 1995)	Michael Hall Luttig	author majority concurring in the judgment	dismissal of petition affirmed
Noland v. Dixon, No. 93-4011, 1995 WL 253149 (4th Cir. May 1, 1995), *rev'd after remand sub nom. Noland v. French*, 134 F.3d 208 (4th Cir. 1998)	Ervin Hamilton Luttig	per curiam	grant of relief vacated; case remanded for further proceedings
Edmonds v. Jabe, No. 95-4002, 1995 WL 26690 (4th Cir. Jan. 23, 1995)	Ervin Luttig Hall	per curiam	denial of motion for stay and dismissal of second petition affirmed
Stockton v. Murray, 41 F.3d 920 (4th Cir. 1994)	Wilkinson Ervin Widener	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Turner v. Williams, 35 F.3d 872 (4th Cir. 1994), *overruled by O'Dell v. Netherland*, 95 F.3d 1214 (4th Cir. 1996)	Michael Hall Luttig	author majority concurring	denial of relief affirmed
Adams v. Aiken, 41 F.3d 175 (4th Cir. 1994)	Butzner Wilkins Sprouse	author unanimous	denial of relief affirmed
Huffstetler v. Dixon, No. 93-4003, 1994 WL 31363028 (4th Cir. June 30, 1994)	Ervin Williams Sprouse	per curiam	denial of relief affirmed
Lawson v. Dixon, No. 94-4004, 1994 WL 258586 (4th Cir. June 13, 1994)	Ervin Widener Niemeyer	per curiam	denial of second petition and motion for stay of execution affirmed
Spencer v. Murray, 18 F.3d 237 (4th Cir. 1994)	Widener Phillips Williams	author unanimous	denial of relief affirmed
Spencer v. Murray, 18 F.3d 229 (4th Cir. 1994)	Widener Phillips Williams	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Edmonds v. Thompson, Nos. 92-4011, 92-4012, 1994 WL 47745 (4th Cir. Feb. 16, 1994)	Ervin Hall Luttig	per curiam	grant of sentencing-phase relief reversed
Smith v. Dixon, 14 F.3d 956 (4th Cir. 1994)	Wilkins Russell Widener Niemeyer Luttig Williams Hall Hamilton Sprouse Ervin Phillips Murnaghan Butzner	author majority majority majority majority majority concurring joined Hall dissenting joined Sprouse joined Sprouse joined Sprouse joined Sprouse	grant of sentencing-phase relief reversed
Washington v. Murray, 4 F.3d 1285 (4th Cir. 1993)	Wilkinson Phillips Butzner	author majority dissenting	denial of relief affirmed
Spencer v. Murray, 5 F.3d 758 (4th Cir. 1993)	Widener Phillips Williams	author unanimous	denial of relief affirmed
Lawson v. Dixon, 3 F.3d 743 (4th Cir. 1993)	Ervin Widener Niemeyer	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Watkins v. Murray, No. 92-4010, 1993 WL 243692 (4th Cir. July 7, 1993)	Ervin Widener Hamilton	per curiam	dismissal of petition affirmed
Smith v. Dixon, 996 F.2d 667 (4th Cir. 1993), *vacated on reh'g en banc*, 14 F.3d 956 (4th Cir. 1994)	Sprouse Butzner Wilkins	author majority concurring in part; dissenting in part	grant of sentencing-phase relief and denial of other claims for relief affirmed;
Pruett v. Thompson, 996 F.2d 1560 (4th Cir. 1993)	Widener Russell Hall	author unanimous	denial of relief affirmed
DeLong v. Thompson, No. 92-4000, 1993 WL 24788 (4th Cir. Feb. 4, 1993)	Butzner Hall Hamilton	author unanimous	denial of petition affirmed
Stamper v. Wright, No. 93-4000, 1993 WL 12492 (4th Cir. Jan. 19, 1993)	Ervin Hamilton Butzner	per curiam	denial of successive petition affirmed
Wise v. Williams, 982 F.2d 142 (4th Cir. 1992)	Luttig Hall Wilkinson	author unanimous	denial of relief affirmed
Jones v. Murray, 976 F.2d 169 (4th Cir. 1992)	Widener Ervin Wilkinson	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Gardner v. Dixon, No. 91-4010, 1992 WL 119879 (4th Cir. June 4, 1992)	Hamilton Russell Phillips	author unanimous	denial of relief affirmed
Adams v. Aiken, 965 F.2d 1306 (4th Cir. 1992), *vacated mem. sub nom. Adams v. Evatt*, 511 U.S. 1001 (1994)	Butzner Sprouse Wilkins	author unanimous	denial of relief affirmed
Poyner v. Murray, 964 F.2d 1404 (4th Cir. 1992)	Widener Russell Hall	author unanimous	denial of relief affirmed
Spann v. Martin, 963 F.2d 663 (4th Cir. 1992)	Chapman Ervin Wilkins	author unanimous	grant of defendant's request for dismissal without prejudice reversed
Williams v. Dixon, 961 F.2d 448 (4th Cir. 1992), *abrogated by Beard v. Banks*, 542 U.S. 406 (2004).	Ervin Butzner Widener	author majority concurring	denial of guilt-phase relief affirmed; denial of sentencing-phase relief vacated
Washington v. Murray, 952 F.2d 1472 (4th Cir. 1991)	Phillips Wilkinson Butzner	author unanimous	dismissal of IAC claim vacated and remanded for evidentiary hearing; dismissal of all other claims affirmed

Name of Case	Sitting Judges	Opinion	Comments
Bunch v. Thompson, 949 F.2d 1354 (4th Cir. 1991)	Wilkinson Widener Sprouse	author majority dissenting	dismissal of petition affirmed
Jones v. Murray, 947 F.2d 1106 (4th Cir. 1991)	Widener Ervin Wilkinson	author unanimous	denial of relief affirmed
Gaskins v. Evatt, No. 91-4009, 1991 WL 176144 (4th Cir. Sept. 5, 1991)	Phillips Hamilton Chapman	per curiam	denial of successive petition and motion for stay of execution affirmed
Fitzgerald v. Thompson, 943 F.2d 463 (4th Cir. 1991)	Wilkinson Russell Chapman	author unanimous	dismissal of petition affirmed
Peterson v. Murray, 949 F.2d 704 (4th Cir. 1991)	Hall Sprouse Wilkinson	per curiam	Grant of temporary stay of execution vacated
Maynard v. Dixon, 943 F.2d 407 (4th Cir. 1991)	Phillips Russell Murnaghan	author unanimous	dismissal of petition affirmed
Stamper v. Muncie, 944 F.2d 170 (4th Cir. 1991)	Murnaghan Ervin Butzner	author unanimous	denial of relief affirmed
McDougall v. Dixon, 921 F.2d 518 (4th Cir. 1990)	Chapman Phillips Wilkins	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Gaskins v. McKellar, 916 F.2d 941 (4th Cir. 1990)	Phillips Ervin Chapman	author unanimous	dismissal of petition affirmed
Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990)	Chapman Ervin Wilkinson	author unanimous	denial of relief affirmed
Clozza v. Murray, 913 F.2d 1092 (4th Cir. 1990)	Widener Hall Wilkins	author unanimous	denial of relief affirmed
Peterson v. Murray, 904 F.2d 882 (4th Cir. 1990)	Sprouse Hall Wilkinson	author unanimous	denial of relief affirmed
Woomer v. Aiken, Nos. 90-4002, 90-4003, 1990 WL 74225 (4th Cir. Apr. 24, 1990)	Murnaghan Chapman Wilkinson	per curiam	denial of relief and motion for stay of execution affirmed
Justus v. Murray, 897 F.2d 709 (4th Cir. 1990)	Hall Butzner Williams (E.D. Va.)	author unanimous	denial of relief affirmed
Coleman v. Thompson, 895 F.2d 139 (4th Cir. 1990)	Butzner Chapman Merhige (E.D. Va.)	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Grandison v. Warden, No. 89-4004, 1990 WL 2247 (4th Cir. Jan. 12, 1990)	Murnaghan Chapman Michael (W.D. Va.)	per curiam	dismissal of petition without prejudice affirmed
Boggs v. Bair, 892 F.2d 1193 (4th Cir. 1989)	Widener Sprouse Dupree (E.D.N.C.)	author unanimous	grant of sentencing-phase relief reversed; denial of guilt-phase relief affirmed
Brown v. Dixon, 891 F.2d 490 (4th Cir. 1989)	Ervin Russell Chapman	author unanimous	grant of sentencing-phase relief reversed; denial of guilt-phase relief affirmed; case remanded for further consideration
Giarratano v. Procunier, 891 F.2d 483 (4th Cir. 1989)	Butzner Hall Wilkins	author unanimous	denial of relief affirmed
Waye v. Murray, 884 F.2d 765 (4th Cir. 1989)	Widener Wilkinson Wilkins	per curiam	denial of relief affirmed
Waye v. Townley, 884 F.2d 762 (4th Cir. 1989)	Widener Wilkinson Wilkins	per curiam	denial of relief and denial of stay of execution affirmed
Evans v. Thompson, 881 F.2d 117 (4th Cir. 1989)	Wilkinson Hall Doumar (E.D. Va.)	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Waye v. Townley, 871 F.2d 18 (4th Cir. 1989)	Wilkins Widener Wilkinson	author unanimous	dismissal of petition affirmed
McDowell v. Dixon, 858 F.2d 945 (4th Cir. 1988)	Winter Ervin Butzner	author unanimous	denial of guilt-phase relief reversed
Woomer v. Aiken, 856 F.2d 677 (4th Cir. 1988)	Wilkins Chapman Wilkinson	author unanimous	denial of relief affirmed
Butler v. Aiken, 864 F.2d 24 (4th Cir. 1988)	Hall Russell Widener Chapman Wilkinson Wilkins Winter Phillips Murnaghan Sprouse Ervin	author majority majority majority majority majority dissenting joined Winter joined Winter joined Winter joined Winter	request for rehearing en banc of panel's affirmance of district court's denial of relief denied
Stockton v. Virginia, 852 F.2d 740 (4th Cir. 1988)	Wilkinson Ervin Widener	author majority concurring in part; dissenting in part	denial of guilt-phase relief and grant of sentencing-phase relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Butler v. Aiken, 846 F.2d 255 (4th Cir. 1988)	Hall Russell Chapman	author unanimous	dismissal of petition affirmed
Clanton v. Bair, 826 F.2d 1354 (4th Cir. 1987)	Haynsworth Hall Wilkinson	author unanimous	grant of sentencing-phase relief reversed; denial of cross-appeal affirmed
Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987)	Butzner Russell Widener	author concurring in part; dissenting in part joined Russell	denial of guilt-phase relief reversed
Whitley v. Muncy, 823 F.2d 55 (4th Cir. 1987)	Winter Widener Sprouse	per curiam	denial of relief affirmed
Whitley v. Bair, 802 F.2d 1487 (4th Cir. 1986)	Widener Winter Sprouse	author unanimous	denial of relief affirmed
Rook v. Rice, No. 86-4005, 1986 WL 18624 (4th Cir. Sept. 16, 1986)	Hall Phillips Haynsworth	per curiam	denial of successive petition affirmed; motion for stay of execution denied
Rook v. Rice, 783 F.2d 401 (4th Cir. 1986)	Hall Haynsworth Phillips	author majority concurring in part; dissenting in part	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Clark v. Townley, 791 F.2d 925 (4th Cir. 1986) (unpublished table decision)	Winter Murnaghan Ervin	author unanimous	grant of relief affirmed
Roach v. Aiken, 781 F.2d 379 (4th Cir. 1986)	Widener Ervin Sneeden	per curiam	CPC denied; appeal dismissed
Hyman v. Aiken, 777 F.2d 938 (4th Cir. 1985), *vacated mem.* 478 U.S. 1016 (1986)	Butzner Russell Sneeden	author unanimous	denial of sentencing-phase relief remanded; denial of guilt-phase relief affirmed
Smith v. Procunier, 769 F.2d 170 (4th Cir. 1985)	Murnaghan Widener Warriner (E.D. Va.)	author unanimous	denial of relief affirmed
Roach v. Martin, 757 F.2d 1463 (4th Cir. 1985)	Widener Ervin Sneeden	author unanimous	denial of relief affirmed
Turner v. Bass, 753 F.2d 1238 (4th Cir. 1985), *rev'd sub nom. Turner v. Murray*, 476 U.S. 28 (1986)	Widener Hall Phillips	author majority concurring	denial of relief affirmed
Briley v. Bass, 750 F.2d 1238 (4th Cir. 1984)	Wilkinson Widener Phillips	author unanimous	denial of relief affirmed

Name of Case	Sitting Judges	Opinion	Comments
Mason v. Procunier, 748 F.2d 852 (4th Cir. 1984)	Hall Ervin Butzner	per curiam	denial of relief affirmed
Barfield v. Woodard, 748 F.2d 844 (4th Cir. 1984)	Phillips Murnaghan Sprouse	per curiam	denial of relief affirmed
Briley v. Booker, 746 F.2d 225 (4th Cir. 1984)	Russell Widener Hall	per curiam	denial of relief affirmed
Briley v. Bass, 742 F.2d 155 (4th Cir. 1984)	Russell Widener Hall	author unanimous	denial of relief affirmed
Keeten v. Garrison, 742 F.2d 129 (4th Cir. 1984)	Hall Russell Butzner	author majority concurring in part; dissenting in part	grant of sentencing-phase relief reversed
Shaw v. Martin, 733 F.2d 304 (4th Cir. 1984)	Widener Phillips Sprouse	author unanimous	denial of relief affirmed
Hutchins v. Woodard, 730 F.2d 953 (4th Cir. 1984)	Murnaghan Phillips Sprouse	author concurring concurring	CPC and motion for stay of execution denied; petition for habeas relief dismissed

Name of Case	Sitting Judges	Opinion	Comments
Stamper v. Baskerville, 724 F.2d 1106 (4th Cir. 1984)	Ervin Butzner Murnaghan	author majority concurring	reversed and remanded to district court to dismiss for defendant's failure to exhaust claims
Hutchins v. Garrison, 724 F.2d 1425 (4th Cir. 1983)	Murnaghan Russell Sprouse	author unanimous	denial of relief affirmed
Barfield v. Harris, 719 F.2d 58 (4th Cir. 1983)	Haynsworth Phillips Murnaghan	author unanimous	denial of relief affirmed