

12-794 WHITE V. WOODALL

DECISION BELOW: 685 F.3d 574

LOWER COURT CASE NUMBER: 09-5352, 09-5406

QUESTION PRESENTED:

Robert Keith Woodall, amidst overwhelming evidence of his guilt, pled guilty to kidnapping, raping, and murdering a 16-year-old child, and thus pled guilty to all aggravating circumstances. At the penalty phase trial, the prosecutor elected to present evidence of guilt and the circumstances of the crimes. Woodall did not testify; and his request that the jury be instructed not to draw any adverse inference from his decision not to testify (a "no adverse inference instruction") was denied. He was sentenced to death by a Kentucky jury. The Kentucky Supreme Court affirmed.

Even though this Court has never held that a defendant is entitled to a no adverse inference instruction at the sentencing phase of a trial where the defendant has pled guilty to the offense and all aggravating circumstances, the Sixth Circuit granted habeas relief to Woodall on the ground that the trial court's failure to provide such an instruction violated his Fifth Amendment right against self-incrimination. The questions presented are:

1. Whether the Sixth Circuit, violated 28 U.S.C. §2254(d)(1) by granting habeas relief on the trial court's failure to provide a no adverse inference instruction even though this Court has not "clearly established" that such an instruction is required in a capital penalty phase when a non-testifying defendant has pled guilty to the crimes and aggravating circumstances.
2. Whether the Sixth Circuit violated the harmless error standard in *Brecht v. Abrahamson*, 507 U.S. 619 (1993), in ruling that the absence of a no adverse inference instruction was not harmless in spite of overwhelming evidence of guilt and in the face of a guilty plea to the crimes and aggravators.

CERT. GRANTED 6/27/2013