

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

Mitts Helps Pro Bono Client Avoid Death Penalty

BY LAURIE STEWART

Of the Legal Staff

Thirteen years ago, Maurice R. Mitts of Frey Petrakis Deeb Blum Briggs & Mitts began working to topple a death penalty sentence in Birmingham, Ala.

Last week, he saw the time and energy he devoted to the case pay off — his client's death sentence was overturned.

Mitts, a commercial litigation attorney, began working on the case while he was a litigation associate at Saul Ewing in 1989. The senior litigation partner stopped by an associate meeting one morning and told his young employees about the Post-Conviction Relief Initiative, an American Bar Association program that matched lawyers willing to work pro bono with indigent death row inmates in the South.

The partner had signed up to take on a case and asked the associates for their assistance.

Mitts, a long-time opponent of the death penalty, volunteered.

The pair took on the case after the direct appeal, which is when the right to counsel stops, and filed a petition for post-conviction relief on the client's behalf, arguing that their client, Virgil Lee Brownlee, received ineffective counsel during his trial and sentencing hearing.

Brownlee was convicted of the murder of Lathen Aaron Dodd. According to the 11th Circuit's opinion, in May 1986, three men stormed into a bar in Birmingham. Each held a gun and ordered the bar's customers to sit on the floor.

One of the men remained standing in the doorway while the two other men walked farther into the bar and robbed the patrons. One of the men demanded to know who the owner of the bar was, and Dodd identified



MITTS: LEARNED NEW AREA OF LAW

himself as the bar's proprietor.

Dodd was ordered to give the contents of the bar's cash register to the men, who then demanded that he hand over more money. Dodd told the men that he had given them all the money he had, and one of the men then fired two shots, one of which fatally injured Dodd.

A month after the robbery and murder, the state of Alabama charged Brownlee, Willie Irving Goodgame and Robert Harris with murder during the course of robbery in the first degree. According to the opinion, Goodgame pled guilty and received a sentence of life imprisonment, and the state proceeded in its case against Brownlee and Harris.

Brownlee's first court-appointed attorney was suspended from practicing law during the trial. Burton Dunn and James Kendrick were then appointed by a circuit court judge to represent Brownlee.

Nine witnesses to the murder and robbery

testified at trial. According to the opinion, none of the witnesses linked Brownlee to either the robbery or the murder. None of the patrons were able to say who shot Dodd. Nor did any forensic evidence put Brownlee at the site of the crime.

The evidence implicating Brownlee came solely from Goodgame's testimony and two other individuals who claimed to be with Brownlee before and after the crime. Goodgame testified that he saw Brownlee holding a gun in the middle of the bar, but that he did not see Brownlee actually shoot Dodd.

The jury found Brownlee guilty of murder. According to the opinion, during the sentencing hearing, Brownlee's lawyers, Dunn and Kendrick, presented no evidence. Both presented a short closing argument that simply asked the jurors to spare Brownlee's life. The jury then deliberated for less than an hour before recommending to the judge that Brownlee receive a sentence of death.

In Alabama, after a jury returns its advisory verdict, the trial judge then takes into account the jury's recommendation and all admitted evidence before reaching an ultimate decision on the sentence. In Brownlee's case, the trial judge agreed with the jury, and sentenced Brownlee to die.

Based on newly discovered evidence, Brownlee appealed the conviction, but the Alabama Court of Criminal Appeals upheld the conviction and sentence. After Brownlee lost on appeal, Mitts became involved in the case and filed for post-conviction relief.

Mitts argued that Dunn and Kendrick performed ineffectively during the trial and sentencing, that Dunn operated under conflict of interest while representing Brownlee because Dunn had prosecuted Brownlee in a previous case and that Goodgame recanted

his testimony that Brownlee was involved in the crime.

Brownlee claimed that, before trial, Dunn met with him for a total of 30 minutes while Kendrick met with him for a maximum of 60 minutes. Neither attorney, Brownlee said, offered mitigating circumstances during the sentencing hearing.

Mitts also argued that Dunn, who had worked as a deputy district attorney, had prosecuted Brownlee in 1980. But, Dunn said, as deputy district attorney, his name appeared on many court documents, even when he was not the prosecutor, and he testified that he had no contact with Brownlee before defending him.

On appeal, Mitts presented deposition testimony from Goodgame. In the testimony, Goodgame said that he was pressured by the district attorney and by his own attorney to implicate Brownlee in order to receive a lesser sentence. Brownlee, Goodgame testified, wasn't involved in either the robbery or murder.

However, the trial court denied Brownlee's petition on all counts. Brownlee then filed a petition for a writ of habeas corpus in U.S. District Court that also denied Brownlee's petition. Brownlee then appealed the decision to the 11th Circuit Court of Appeals.

The federal court ruled that Brownlee was not entitled to habeas corpus relief vacating his murder conviction.

The 11th Circuit did decide that Brownlee presented sufficient evidence to vacate the death sentence, primarily because Dunn and Kendrick failed to present any evidence of mitigating circumstances to the sentencing jury.

"Under the facts of this case, we are compelled to conclude that counsel's failure to investigate, obtain, or present *any* mitigating evidence to the jury, let alone the powerful mitigating evidence of Brownlee's borderline mental retardation, psychiatric disorders, and history of drug and alcohol abuse, undermines our confidence in Brownlee's

death sentence," the court wrote.

After more than a decade of pro bono work on Brownlee's case, last week Mitts learned that the 11th Circuit had reversed Brownlee's sentence.

"I come back from services on Yom Kippur, which is about being written into the book of life or the book of death," Mitts said. "It is 11 o'clock at night, and I called my secretary who told me about the decision. ... It was really like a miracle. He was really written into the book of life. It was a very spiritual moment for me."

Mitts then got to relay the news to Brownlee, and equated that moment to relaying good news to a friend.

"There were times when he was worried along the years because we were getting further and further along in the process. Now I can sense how the relief is setting in," Mitts said. "He would be a lot happier if the whole conviction had been overturned."

Incorporating Brownlee's case with his everyday practice, he said, was not easy.

"I was a third-year litigation associate at a big firm," Mitts said about his first years on the case. "It was something that was totally outside my practice area, and it was totally pro bono, so it wasn't bringing money into the firm. ... From a dollar and cents reality, it really didn't speak to the firm's bottom line."

And, he had to learn a new area of law — while he has been successful as a commercial litigator, recently representing the plaintiff in a commercial dispute that resulted in the largest verdict in the history of Pennsylvania, he'd never handled a criminal case of this magnitude.

Mitts became involved in the case in the early 1990s, just as the economy began to fail.

"While there was never ever an unkind word to me about the case when I was at Saul Ewing or when I came to the firm I am at now, I was always mindful of the fact that you are rated ultimately on how valuable you are as a lawyer and how well you

take care of all the things that bring in money that make it possible for the firm to exist," Mitts said.

He said that he felt like he has had two jobs for the past 13 years — handling Brownlee's case and handling his commercial litigation practice. Nor was it always easy to be a northerner in a southern courtroom, he said.

"I was the northerner challenging the fairness, legality and integrity of the whole process," Mitts said. "While I was treated professionally, it was always very clear to me that I was largely unwelcome. ... It just seemed that the more I got into it that there was a pretty strong current in terms of just keeping things the way that they were; he got his trial, the jury said it, the judge affirmed it. ... They were going through the motions."

But, he had the support of his co-workers and of his family, including his two young children, that helped make overturning Brownlee's death sentence easier.

When he moved to Frey Petrakis in 1998, some of his co-workers there had also worked at Saul Ewing, and were familiar with the Brownlee case and that it would require a great deal of Mitts' energy.

"My family believes in me getting the good, right results, so they just tell me, just don't stop, Dad, go Dad!," Mitts said.

His family and co-workers' understanding will be called upon again — Mitts' fight for Brownlee isn't over yet. Next, he will work toward overturning Brownlee's murder conviction.

"I want very much to see Virgil outside of prison," Mitts said. "It would be a very satisfying thing, and to see that ... The level of inspiration that I would experience would get me to do another one of these cases. ... This is about the sanctity of life. That is why we have murder trials, to say that we shouldn't kill people. It is a wrong thing and I have always found it paradoxical that the state's response to that is to kill somebody." •