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Death by a Single Sentence

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DEATH
BY A SINGLE SENTENCE

By Danielle DalPorto

In 1984, Victor Taylor, a 24-year-old Black man, was sentenced to death for the murder of two white teenagers in Louisville, Kentucky.[1] His cousin and co-defendant received a life sentence.[2] While the details of the crime are horrific,[3] the author has omitted them from this analysis: One's constitutional rights are not contingent on the severity of the crime he has allegedly committed. The United States Constitution is exceedingly clear on this point, containing several safeguards to protect the rights of criminal defendants—none of which have provided any relief for Taylor. In fact, courts have repeatedly failed to uphold his constitutional rights, specifically his Fourteenth Amendment right to Equal Protection under the law.[4] Most recently, the Sixth Circuit Court of Appeals affirmed the district court's denial of his *habeas corpus* claim,[5] relying on a flimsy interpretation of a procedural technicality. Worse than that, the court's decision essentially punishes Taylor (and his counsel) for being too thorough in trying to appeal his death sentence.

Procedural History

It is impossible to analyze this case without the context of *Batson v. Kentucky*,[6] which was decided three weeks before the trial court judge sentenced Taylor to death.[7] In *Batson*, the Supreme Court ruled that striking Black members of a jury pool based on their race violates the Equal Protection rights of Black defendants under the Fourteenth Amendment.[8] This decision overturned *Swain v. Alabama*,[9] which required a defendant to show that the prosecutor had a systematic practice of excluding Black jurors from all criminal cases. As one of the dissenting judges from the Sixth Circuit points out, after *Batson,* excluding even one juror on the basis of race is unconstitutional.[10] Taylor has maintained that his rights were violated under *Batson* throughout almost four decades of appeals.

Taylor I

Taylor raised a *Batson* claim in his first appeal directly to the Kentucky Supreme Court (*Taylor I*), arguing that the prosecutor excluded Black members of the jury pool because of their race.[11] Specifically, he argued that the prosecutor violated *Batson* by using half of his peremptory strikes to eliminate two-thirds of potential Black jurors without an alternative explanation.[12] The court summarily denied this claim and 41 others, choosing to expound on only two of Taylor's assignments of error. It explained: "We have carefully reviewed all of the issues presented by Taylor.... Allegations of error which we consider to be without merit will not be addressed here."[13] The word "Batson" does not appear anywhere in the opinion.

Taylor II

Seven years later, Taylor filed for post-conviction relief (*Taylor II*) under a local rule that barred him from bringing claims already adjudicated on direct review.[14] As this precluded him from relying on *Batson*, he argued instead that the prosecutor violated his Equal Protection rights under *Swain*.[15] To meet *Swain's* higher burden of showing a systematic practice of discrimination, Taylor introduced five new pieces of evidence, including passages from the Kentucky Prosecutor's Handbook listing jurors of the same race or national origin as the defendant as "not preferable."[16] While the dissent found this a clear violation of both *Swain* and *Batson*,[17] the majority failed to address the issue head on. Instead, it categorized the claim as "an attempt to get around a long-established rule."[18] In the Kentucky Supreme Court's view, invoking *Swain* was an attempt to retry the *Batson* claim, which was already reviewed on direct appeal.[19] Therefore, additional evidence of discriminatory practices was irrelevant.[20]

While the merits of such a narrow holding are debatable—to say the least—the court's analysis did not stop there. It went on to state that even if Taylor could bring a *Batson* claim in this appeal, it would fail on the merits.[21] Here, the majority contended that a successful *Batson* claim requires a showing of "other relevant circumstances" that create an inference that the prosecutor struck potential jurors on the basis of race.[22] By this logic, Taylor's original argument—or any argument based solely on the number of peremptory strikes used on Black jurors—could never prove a *Batson* violation. Once again, the court denied relief.[23]

Taylor v. Jordan

Nearly 20 years later, the Sixth Circuit Court of Appeals heard the case *en banc,* and like every court before it, failed to provide Taylor any relief.[24] Somewhat surprisingly, the majority conceded that the Kentucky Supreme Court's reasoning in *Taylor II* misconstrued *Batson*.[25] It accepted Taylor's argument that *Batson* does not require a showing of "other relevant circumstances," yet decided to ignore this blatant misapplication of federal law. Instead, the court opted to review the *Batson* claim under the brief analysis in *Taylor I*,[26] which denied the claim and 41 others in a single sentence.[27]

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The standard for such summary denials is extremely deferential; courts need only find that "any fair-minded jurist" could have adopted an argument or theory in support of the claim in question.[28] The majority—over the objections of one dissenting judge who found the racially-motivated jury selection so blatant that no fair-minded jurist could disagree[29]—ruled that this standard was met.[30] The possible *Batson* violation is a point of contention between the majority and the dissenters, but because of the degree of deference the majority employed here, it is not an issue that the majority gave substantial weight to.

As dissenting Judge Moore argued , the majority did not have to ignore *Taylor II* in favor of "read[ing] tea leaves" in *Taylor I*.[31] Indeed, the majority could have "looked through" *Taylor I* to *Taylor II* and imputed the latter's error to the former—and therefore overturn *Taylor II* based on its clear misconstrual of federal law—a precedent set by *Wilson v. Sellers*.[32] The majority rejected this argument, pointing out that *Wilson* only applies in instances where a court summarily affirms a lower court's reasoning (as opposed to a later decision by the same court).[33] However, as Moore argues, there is no reason why *Wilson* cannot apply, as it stands for the proposition that "courts should defer to the last related state-court decision that does provide a relevant rationale."[34] Here, the majority chose to evaluate what the court could have meant in its one sentence denial instead of what the same court—including a judge who joined both opinions[35]—actually said.

The dissenting opinions explain exactly how Taylor's constitutional rights were violated. They do not note, however, the contempt that the majority seems to have for Taylor's insistence on pursuing these rights in the first place. The majority opinion emphasized the length of his appeal several times, noting, almost tangentially, that his brief was 145 pages long and included 44 claims for relief.[36] The court goes on to explain that it cannot blame state courts for issuing summary denials, especially in cases like Taylor's, in which "the petitioner presented the state court with literally dozens of claims for relief."[37] The majority's focus on the thoroughness of this appeal is particularly baffling here, considering the stakes. Yes, Taylor presented "literally dozens" of claims; for him, the stakes are literally life or death. This sort of language not only obfuscates the importance of carefully considering each claim, it also raises an ethical question about summary denials in death penalty cases. As it stands, the state of Kentucky derives the authority to kill Taylor from a one-sentence denial of relief with no substantive rationale behind it.

Ultimately, there were a number of avenues through which the Sixth Circuit Court of Appeals could have protected Taylor's constitutional rights, saving his life in the process. Its failure to do so in this way—using the strictest interpretation of a procedural issue—is perhaps the cruelest. Taylor remains on death row because of a state court's decision to write only a few words, allowing subsequent courts to grant it the highest level of deference.

1. *Taylor v. Jordan,* 10 F.4th 625, 628 (6th Cir. 2021) (en banc).
2. This case also involved a potential violation of the Confrontation Clause. The trial court allowed Taylor's co-defendant's taped testimony into evidence without opportunity for cross-examination. Though this is an issue rife with injustice and worth further analysis, it is beyond the scope of this comment.
3. See *Taylor,* 10 F.4th at 628.
4. U.S. Const. amend. XIV, § 1.
5. *Taylor,* 10 F.4th at 628.
6. 476 U.S. 79 (1986).
7. *Taylor,* 10 F.4th at 631.
8. *Batson* 476 U.S. at 86.
9. 380 U.S. 202 (1965).
10. *Taylor* 10 F.4th at 622 (White, J., dissenting).
11. *Id.* at 631.
12. *Id.*
13. *Taylor v. Commonwealth,* 821 S.W.2d 72,73 (Ky.1990).
14. Ky. Rule Crim. Proc. 11.42.
15. *Taylor v. Commonwealth*, 63 S.W.3d 151, 156 (Ky. 2001).
16. *Id.* at 171.
17. *Id.* at 172.
18. *Id.* at 157.
19. *Id.*
20. *Id.*
21. *Id.* at 156.
22. *Id.* at 157.
23. *Id.*
24. *Taylor* 10 F.4th at 628.
25. *Id.* at 633.
26. *Id.*
27. See *supra* note 13.
28. 28 U.S.C.§2254(d)(1).
29. *Taylor* 10 F.4th at 646 (Cole, J., dissenting).
30. *Id.* at 636.
31. *Id.* at 642 (Moore, J., dissenting).
32. 138 S. Ct. 1188 (2018).
33. *Taylor* 10 F.4th at 633.
34. *Id.* at 643 (Moore, J., dissenting).
35. *Id.* at 634.
36. *Id.* at 631.
37. *Id.* at 632.