

UNITED STATES COURT OF APPEALS

OCT 31 2007

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

BILLY GILLEY,

Petitioner - Appellee,

v.

M. MORROW,

Respondent - Appellant.

No. 05-36201

D.C. No. CV-98-00854-AS
District of Oregon,
Portland

ORDER AMENDING

Before: GOULD, PAEZ, and RAWLINSON, Circuit Judges.

The memorandum disposition filed on August 31, 2007 is AMENDED as follows.

The first sentence of the paragraph beginning on page 6 and concluding on page 7 states:

To the extent that the district court concluded that trial counsel rendered ineffective assistance by failing to pursue a mental defense, such as lack of intent with regard to the murder of Gilley’s sister Becky, and that there is a reasonable probability that such a defense would have resulted in a manslaughter verdict, we disagree.

The first sentence of the paragraph beginning on page 6 and concluding on page 7 is deleted in its entirety and replaced with the following language:

To the extent that the district court concluded that trial counsel rendered ineffective assistance by failing adequately to pursue a mental defense, such

as lack of intent with regard to the murder of Gilley's sister Becky, and that there is a reasonable probability that such a defense would have resulted in a manslaughter verdict, we disagree.

The last sentence of the paragraph beginning on page 6 and concluding on page 7 states:

We conclude that counsel did not render ineffective assistance by not pursuing a defense of lack of intent regarding Becky Gilley's murder because it is not reasonably likely that the jury would have found that Gilley possessed the requisite intent under Oregon law and that Gilley was not prejudiced by any such failure.

The last sentence of the paragraph beginning on page 6 and concluding on page 7 is deleted in its entirety and replaced with the following language:

We conclude that counsel did not render ineffective assistance by not adequately pursuing a defense of lack of intent regarding Becky Gilley's murder because it is not reasonably likely that the jury would have found that Gilley possessed the requisite intent under Oregon law and that Gilley was not prejudiced by any such failure.

IT IS SO ORDERED. No further petitions shall be entertained.