

Decade After SCOTUS Ruling, Latham & Watkins Team Lands Win for Death Row Inmate

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BY MARCIA COYLE

Ten years after a crucial victory in the U.S. Supreme Court, Latham & Watkins partner Gregory Garre and an associate-led team recently won federal sentencing relief for an Alabama death row inmate whose original lawyers abandoned him to what one justice called “a veritable storm of misfortune.”

Their pro bono victory before U.S. District Judge Karon Bowdre followed a five-day evidentiary hearing on the inmate's claim of ineffective assistance of counsel at his sentencing. Latham associates engaged in a huge on-the-ground effort in Alabama to discover witnesses to a crime that occurred two decades ago, and to find people with knowledge of the character and behavior of the Alabama inmate during that time.

The inmate, Cory Maples, was convicted and sentenced to death for shooting two friends in the head, each twice, without any known provocation. The jury voted 10-2 to recommend death to the trial judge.

After securing the 7-2 high court ruling in 2012, Garre, who heads Latham's global appellate and Supreme Court practice, said, “Never did I think we would be working on this for a decade after that, and making subsequent trips to the court of appeals and back down to the district court.”

Maples had been represented pro bono by two associates at Sullivan & Cromwell in his state post-conviction proceedings. They subsequently left the firm but failed to notify Maples of the change, and failed to withdraw as counsel of record. The firm failed to monitor Maples' case after they left. When



Courtesy photos

Elana Nightingale Dawson, left, and Gregory Garre, right, with Latham & Watkins.

the state court sent notice that Maples' post-conviction petition was denied, the law firm's mailroom sent the notice back to the state court unopened. The court clerk did nothing with the returned notice. Maples missed the deadline for appealing the state post-conviction denial.

Maples then sought federal habeas relief for his claim of ineffective assistance of counsel during his sentencing trial, but it was denied by a federal district court and the U.S. Court of Appeals for the 11th Circuit. By not filing a timely appeal of his state post-conviction petition, those courts said, he had procedurally defaulted his claim.

Latham's Garre, a former U.S. solicitor general, took over in the Supreme Court. Justice Ruth Bader Ginsburg, writing for the majority, said, “Maples was disarmed by extraordinary circumstances quite beyond his control. He has shown ample cause,

we hold, to excuse the procedural default into which he was trapped when counsel of record abandoned him without a word of warning.” Justices Antonin Scalia and Clarence Thomas dissented.

The Supreme Court sent Maples’ case back to the Eleventh Circuit, which subsequently returned the case to Senior U.S. District Judge Sharon Blackburn who had rejected Maples’ habeas petition. This time, the judge, in a 100-page opinion, again denied habeas relief, ruling that the state court’s denial of Maples’ claim was not unreasonable. The judge also refused to issue a certificate of appealability to the 11th Circuit.

Garre and his team returned to the 11th Circuit seeking the certificate of appealability in order to brief Maples’ ineffective-assistance-of-counsel claim. The appellate court agreed and Garre argued for Maples. In April 2018—six years after the Supreme Court decision—the appellate court, in a 2-1 decision, ruled that Maples deserved an evidentiary hearing on his claim and sent the case back to the district court where Judge Karon Bowdre handled the case after Blackburn took senior status.

The appellate court basically told the Latham team to go back and prove Maples’ allegations. “Easier said than done,” Garre recalled. But that is where “Elana’s amazing work came in,” he added.

Garre was referring to associate Elana Nightingale Dawson, who with three other associates—Rebekah Soule, Natalie Hardwick Rao, and now counsel, Anna Rathbun—took the lead in

gathering evidence for the district court hearing. Nightingale Dawson is a copyright lawyer and former clerk to Justice Anthony Kennedy.

“There was a huge team,” Nightingale Dawson said. “For much of the work we do, you can sit in an office or go into a conference room. This required a lot of knocking on doors, building relationships, requiring people to look back 20-25 years ago. That’s asking a lot. It required a lot of different skill sets—analysis, investigation, building relationships in a small town where everybody knows everybody.”

The team included 10 associates actively working on the case throughout. There also were partner supervisors, local counsel Wayne Morse of Waldrep, Stewart & Kendrick, experts and a mitigation team. It was standard practice to have two team members go on the ground to support note-taking and as support if unusual situations occurred.

The culmination was a five-day hearing during which the Latham team, with Nightingale Dawson taking the lead in court, put on 22 witnesses. Maples sat through the hearing. Maples’ lawyers had to prove facts related to whether counsel was ineffective, and show what the mitigation phase should have looked like if counsel had been effective.

Judge Bowdre on Jan. 27 issued a 127-page opinion granting Maples habeas relief and ordering the state either to retry the penalty phase of Maples’ trial or sentence him to life in prison.

Bowdre wrote that Maples’ trial counsel “failed to reasonably investigate and present mitigating

evidence on Maples’ behalf. Had his counsel done so, a reasonable probability arises that at least one juror would have been swayed to vote for life without the possibility of parole instead of death.”

“We were assisted by the Federal Defenders of Alabama’s Middle District who do this day in and day out,” Nightingale Dawson said. “We also were in touch with the Equal Justice Initiative. I’m fully aware there are people who do this work all the time and we were beneficiaries of their guidance and expertise.”

The Supreme Court’s 2012 opinion talked about the lawyer as agent of the client, recalled Nightingale Dawson. “Our goal through all of this was to give Mr. Maples what he hadn’t had before—zealous representation, and to allow him to be involved in all of the ways a client should be involved and able to assist in his defense.”

Despite the decade-long effort, both lawyers said they would do it again.

“Death penalty cases are different,” Garre said. “The stakes obviously don’t get any bigger than that. As a lawyer, who is part of a system designed to achieve justice, I wouldn’t trade the experience.”

Nightingale Dawson echoed his comments. “Having a law degree is a privilege and an honor. It puts us in a position to effect change and with that comes responsibility. It was an honor to use that ability in service of Mr. Maples. So I would absolutely do it again.”

The state of Alabama has not yet said whether it will accept either of the judge’s two options. “We’re waiting,” Garre said.