

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

FILE NAME: 15A0458N.06

CASE NO. 12-2624

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 17, 2015
DEBORAH S. HUNT, Clerk

COREY DONALD,)	
)	
<i>Petitioner-Appellee,</i>)	ON APPEAL FROM THE
)	UNITED STATES DISTRICT
v.)	COURT FOR THE EASTERN
)	DISTRICT OF MICHIGAN
JEFFREY WOODS, Warden,)	
)	
<i>Respondent-Appellant.</i>)	
)	

Before: GUY, BATCHELDER, and MOORE, Circuit Judges.

ALICE M. BATCHELDER, Circuit Judge. Following remand from the Supreme Court, we VACATE the district court’s grant of habeas corpus to Petitioner Corey Donald and REMAND for further proceedings in light of the Supreme Court’s opinion. *See Woods v. Donald*, 575 U.S. --, 135 S. Ct. 1372 (2015).

I.

The State of Michigan charged Donald with one count of first-degree felony murder and two counts of armed robbery. A jury convicted him on all three counts. During trial, however, his counsel was absent for a brief portion of the prosecution’s proof, which was directed at certain co-defendants and did not concern Donald’s particular theory of defense.

On direct appeal, Donald argued that the brief absence by his attorney during a critical stage denied him his Sixth Amendment right to the effective assistance of counsel, in violation of *United States v. Cronin*, 466 U.S. 648 (1984). The Michigan Court of Appeals rejected his claim and affirmed the convictions. The Michigan Supreme Court denied further review.

II.

Donald petitioned for a writ of habeas corpus in the federal district court, raising the same ineffective-assistance-of-counsel claim. The district court granted the petition, holding that the Michigan state court decision was contrary to and an unreasonable application of *Cronic*. See *Donald v. Rapelje*, No. 09-cv-11751, 2012 WL 6047130 (E.D. Mich., Dec. 5, 2012). The State appealed and a divided panel of this court affirmed. See *Donald v. Rapelje*, 580 F. App'x 277 (6th Cir. 2014).

The State petitioned for certiorari in the Supreme Court and obtained review. The Court held that no decision from the Court clearly established that *Cronic* applies to these circumstances and, therefore, reversed our decision and remanded for further proceedings. See *Woods v. Donald*, 575 U.S. - -, 135 S. Ct. 1372 (2015).

III.

For the foregoing reasons, we VACATE the judgment of the district court and REMAND for further proceedings consistent with the Supreme Court's opinion.