

1. Did the habeas court err when it concluded that the trial court's decision to admit testimony concerning "gahnite" was not a trial error that had substantial and injurious effect or influence in determining the jury's verdict and thereby deprived Moeller of his rights to due process of law as provided by the state and federal constitutions?

The habeas court found in the negative.

2. Did the habeas court err when it concluded that Moeller was not denied his right to due process of law by the trial court's instructions concerning life imprisonment without parole when the trial court responded to the jury's question: "If the penalty of 'single life imprisonment without parole' should be imposed upon the Defendant, will he ever have a chance to appear before a parole board?"

The habeas court found no constitutional violation.

3. Did the habeas court err when it concluded that Moeller's trial lawyers provided effective assistance of counsel in violation of his rights provided by the state and federal constitutions even though trial counsel:

- a. Failed to participate in the *Daubert* hearing concerning the admissibility of DNA evidence,
- b. Failed to present evidence demonstrating that APO-B DNA evidence is not reliable and is therefore inadmissible, and
- c. Failed to test sample of the material purported to be gahnite?

The habeas court found that trial counsel's representation was not constitutionally ineffective.

4. Did the habeas court err when it concluded that the trial court's decision to admit APO-B DNA evidence was not a trial error that had substantial and injurious effect or influence in determining the jury's verdict and thereby deprived Moeller of his rights to due process of law as provided by the state and federal constitutions?

The habeas court found in the negative.

5. Did the habeas court err when it concluded that failure to follow the procedures outlined in SDCL ch. 23A-27A was not a structural error affecting the entire trial process and thereby depriving Moeller of his rights to due process of law, equal protection of the laws, and the doctrine of separation of powers as provided by the state and federal constitutions because

- a. SDCL ch. 23A-27A as applied violates the doctrine of the separation of powers doctrine,
- b. SDCL ch. 23A-27A has been applied unconstitutionally throughout the state in manner so as to allow a state's attorney the discretion whether to seek the death penalty, and
- c. Other persons who have been charged with Class A felonies have been allowed to enter into plea bargains in which state's attorneys have made promises of life imprisonment in return for a guilty plea?

The habeas court found no structural error.

6. Did the habeas court err when it concluded that the process by which Moeller was charged, convicted, and sentenced to death is not defective within the meaning of SDCL § 21-27-16(3) in some substantial form required by law even though:

- a. The death penalty under Chapter 23A-27A is a sentencing enhancement in all cases for which the death penalty may be authorized, and
- b. The Due Process Clause of the Fifth Amendment and the notice and jury guarantee of the Sixth Amendment of the United States Constitution require that any fact that increases the maximum penalty for a crime must be charged in an indictment?

The habeas court found no constitutional violation.