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#### **Fourth Circuit Court of Appeals**

(Note: You may access the court's opinion by clicking on the case name)

#### **Court Rules on Federal Habeas Review of State-Imposed Death Sentence That South Carolina Supreme Court Unreasonably Determined That State Prosecutor's Racially Inflammatory Jury Argument at Capital Sentencing Hearing Did Not Violate Due Process**

[Bennett v. Stirling](#), \_\_\_ F.3d \_\_\_, 2016 WL 6833373 (4th Cir. November 21, 2016). The plaintiff, who was convicted of murder in a South Carolina state court and sentenced to death, brought a federal habeas action in a South Carolina federal district court that alleged, among other grounds, that his death sentence should be set aside because the state prosecutor's racially inflammatory jury argument violated due process. The federal district court ruled in favor of the plaintiff on this and another ground and reversed his death sentence. The fourth court affirmed, ruling that the South Carolina Supreme Court unreasonably determined that state prosecutor's racially inflammatory jury argument at the capital sentencing hearing did not violate due process. The court stated that the argument before an all-white jury: (1) alternated between characterizing the plaintiff (criminal defendant) as a primitive, subhuman species and a wild vicious animal; and (2) mined a vein of historical prejudice against African-Americans, who have been appallingly disparaged as primates or members of a subhuman species in some lesser state of evolution.

#### **Court Rules That Federal Habeas Plaintiff Failed to Prove Prejudice Prong of Ineffective Assistance of Counsel Claim That Was Based on Defense Counsel's Failure to Object to Judge's Rejection of Plea Agreement Between Defendant and Prosecutor**

[Rodriguez v. Bush](#), \_\_\_ F.3d \_\_\_, 2016 WL 6892472 (4th Cir. November 23, 2016). The plaintiff was convicted of drug trafficking in a South Carolina state court. Before trial the judge rejected a plea agreement between the defendant and the prosecutor. The judge did so off the record and did not give a reason for doing so other than he was ready to try a case. Defense counsel did not object to the plea agreement rejection, nor did he ask the judge to place his reasons for doing so on the record. After unsuccessfully alleging in state court proceedings that his defense counsel was ineffective by not objecting to the plea agreement, the plaintiff filed a habeas corpus petition in a South Carolina federal court based on the same issue. The federal district court denied the petition and the fourth circuit affirmed. Without deciding whether defense counsel's performance was deficient, the court ruled that the plaintiff failed to show that he was prejudiced because the United States Supreme Court clearly stated in *Missouri v. Frye*, 132 S. Ct. 1399 (2012), that there is no federal constitutional right that a plea agreement be accepted by a trial judge.