

Summary of *Ray v. Alabama*

No physical evidence connects Domineque Ray to the crime that put him on death row in Alabama. Evidence identifying someone else as the perpetrator was never shared with Domineque's lawyers. No jury heard the evidence of Domineque's childhood torment, the violence he witnessed and suffered, his low IQ and mental illness, all of which weighed against the death penalty and which the Supreme Court repeatedly has said is the type of mitigation evidence that must be considered in death penalty cases.

A petition for writ of certiorari on Domineque's behalf will be filed with the Supreme Court this summer. Unless the Court grants Domineque's forthcoming petition, Domineque may be executed by lethal injection in a matter of months.

Domineque was sentenced to death in Selma, Alabama, in 1999 for a crime that played out when he had just turned 19. The sentencing occurred under an advisory jury system identical to Florida's, which the Supreme Court held in January is unconstitutional. The prosecution withheld witness statements implicating someone else in the crime – someone whom police previously had arrested and charged and held in custody for nearly two years. Domineque denies any role in the offense, the murder of a 15-year-old Selma girl. Domineque's conviction hinges on testimony of another defendant who implicated Domineque and who pleaded guilty and was granted a life sentence. The jurors who recommended death for Domineque heard nothing about Domineque's haunting, traumatic upbringing, nothing about his schizotypal personality disorder, nothing about the steroid drugs to which Domineque said he had become addicted at age 16, nothing about the beatings he suffered or that he witnessed his mother suffer from a succession of assaultive boyfriends. No jury considered mitigation evidence that the judge who presided over the trial called "significant" and that the federal Court of Appeals called "disturbing," "profound," and "compelling."

The prosecution withheld evidence.

The Constitution's guarantee of due process requires the prosecution to share any evidence that might be helpful to the defense. But prosecutors failed to do that in Domineque's case. They withheld graphic witness statements implicating Rod Titus "Tie Dye" Suttle, whom the witnesses said had bragged about murdering the young victim after she smoked his marijuana and then refused to have sex. Prosecutors also withheld a letter from the local Sheriff's office stating that police believed the murder occurred somewhere other than where the victim's remains were recovered – contradicting the story justifying Domineque's arrest and the theory prosecutors presented to the jury. Prosecutors also withheld evidence placing in doubt Domineque's role in a second crime, based on the same co-defendant's testimony, which was used to convince the jury to recommend death for Domineque. The State refused to hand over this evidence until being ordered to produce law enforcement files to Domineque's post-conviction lawyers.

The jury never heard about the abuse Domineque suffered.

Domineque was born into poverty in Selma. His mother divorced Domineque's father after suffering abuse that included an attempt to strangle her while she was pregnant. Like Domineque, his mother also suffered from intellectual disability and grew up in poverty, neglect, and abuse. She went from one abusive relationship to another. When Domineque and his brother Europe were ages three and four, their mother took them from Selma to Chicago, where she worked as a prostitute. There, the children lived in an abandoned building and slept on the floor amid cockroaches and vermin.



Domineque, left, and older brother Europe grew up mainly in Selma, Alabama

While in Chicago, the mother regularly left her young sons at her aunt's while she roamed the streets. Then one night she left the boys altogether, unsupervised and alone, at that infested abandoned building. After days with no food and no supervision, residents reported the boys to police, who picked them up delivered them to Catholic Charities.

The State of Illinois ruled that Domineque and Europe were neglected dependents. After time in foster care, the boys' father took the boys to live with him and his common-law wife and her five older children in New York.

Domineque's family moved state to state from one crime-ridden neighborhood to another, wherever the father could find work. The boys' father beat Domineque and Europe with his belt. He punished the boys by locking them in the dark for hours at a time. Their stepsiblings bullied them, abused them, stole their food, forced them to drink urine. Their stepmother dressed Domineque in a wig and makeup, made him shake his hips and pretend to dance. She mocked Domineque while he cried and his stepsiblings jeered. The stepmother's family sexually abused Domineque and Europe.

Domineque's father finally returned the boys to their mother in Selma where they enrolled in school but continued living in poverty, in homes infested with rats and roaches. While their mother spent time away from home with boyfriends, sometimes for weeks at a time, the boys fended for themselves. When she was home, she beat her children, and her boyfriends stomped and beat her in the children's presence. The mother attempted suicide and tried to cut her throat with the claw of a hammer. Domineque's brother Europe attempted suicide through electrocution.



Domineque, left, and brother Europe during a break in Domineque's post-conviction hearing in 2006. Not shown in photo are the shackles on Domineque's feet and hands during court proceedings.

The death penalty is supposed to be reserved for the most morally depraved. The Supreme Court has held that juries and judges considering the death penalty must know the defendant's life history to assess moral culpability and to individualize the sentence. But here neither the jury nor the judge heard Domineque's story. Domineque's lawyers failed to ask anyone beyond Domineque, with an IQ of 80, and his mother with an IQ of 69, for assistance and information from which to construct Domineque's mitigation case. They called only one witness to testify on Domineque's behalf: his mother, whose brief, incoherent testimony concealed the magnitude of Domineque's torture.

Just two votes away.

The jury recommended the death penalty by a vote of 11–1. In Alabama it takes at least 10 jurors to make such a recommendation. Domineque seeks a new trial in which the jury can hear the evidence withheld by prosecutors and a new sentencing hearing in which jurors can learn about Domineque's background and history.

After a two-and-a-half-day hearing in Selma, the state court denied any postconviction relief even though the judge stated on the record that Domineque's mitigation evidence was "significant." The Alabama Court of Criminal Appeals denied Ray's challenge to that order. The Alabama Supreme Court refused to even consider the case. When Domineque filed in federal court for the habeas corpus protections guaranteed by the U.S. Constitution, the U.S. District Court for the Southern District of Alabama denied him again. Most recently, the Eleventh Circuit Court of Appeals declared the evidence of Domineque's past that his lawyers failed even to investigate was "disturbing," "profound and compelling." Yet the three-judge panel declined to grant Domineque a chance to convince a jury of his peers that he doesn't deserve to be killed for a crime in which he denies involvement.