

SUPREME COURT OF ARIZONA

State v. Bennett, 213 Ariz. 562

146 P.3d 63 (2006) · No. CR-05-0533-PR · Decided November 9, 2006

SUMMARY

The Arizona Supreme Court held that Arizona Rule of Criminal Procedure 32.2(a)(3) did not preclude Donna Jean Bennett’s claim of ineffective assistance of appellate counsel because her prior post-conviction counsel could not properly be expected to assert his own ineffectiveness. The court further held that Bennett stated a colorable claim based on appellate counsel’s failure to challenge the sufficiency of the evidence establishing causation for her felony-murder conviction. The court reversed the denial of post-conviction relief and remanded for a hearing on the merits.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	McGregor, Chief Justice; Ruth V. McGregor, Chief Justice; Rebecca White Berch, Vice Chief Justice; Michael D. Ryan, Justice; Andrew D. Hurwitz, Justice; W. Scott Bales, Justice
JURISDICTION	Arizona
DECIDED	November 9, 2006
DOCKET	CR-05-0533-PR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bennett petitioned the Arizona Supreme Court for review of the denial of her second petition for post-conviction relief, asserting ineffective assistance of appellate counsel for failing to challenge the sufficiency of the evidence supporting the causation element of her felony-murder conviction.
STANDARD OF REVIEW	The denial of post-conviction relief based on the absence of a colorable claim is reviewed for abuse of discretion. Whether a claim is precluded under Rule 32.2(a)(3) is determined under the rule's waiver and preclusion requirements.
PRECEDENTIAL VALUE	Published, precedential en banc opinion of the Supreme Court of Arizona
PARTIES	Donna Jean Bennett v. State of Arizona

TOPICS

state post-conviction relief

ineffective assistance

appellate procedure

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evidence

PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether Arizona Rule of Criminal Procedure 32.2(a)(3) precluded Bennett's claim that appellate counsel was ineffective for failing to challenge the sufficiency of the evidence of causation supporting her felony-murder conviction.
2. Whether Bennett stated a colorable ineffective-assistance-of-appellate-counsel claim sufficient to require an evidentiary hearing.
3. Whether the State's evidence established the causation element of felony murder was not decided on the merits by the Arizona Supreme Court, but was identified as an issue the superior court must apply the correct legal standard to on remand.

HOLDINGS

1. Rule 32.2(a)(3) did not preclude Bennett's claim because her first post-conviction-relief proceeding was the first proceeding in which she could raise ineffective assistance of appellate counsel without requiring post-conviction counsel to assert its own ineffectiveness.
2. Bennett stated a colorable claim because appellate counsel may have performed below objectively reasonable standards by failing to challenge the sufficiency of the evidence on the fundamental causation element of felony murder, and there was a reasonable probability that the omitted challenge would have changed the outcome.
3. The Arizona Supreme Court did not decide whether the evidence was sufficient to establish causation; it held that the superior court had applied an incorrect legal standard and must address the issue on remand.

KEY QUOTATIONS

"Therefore, Rule 32.2.a(3) does not preclude Bennett's ineffective assistance of counsel claim." (213 Ariz. at 564, ¶ 16)

"Therefore, we find that she has stated a colorable claim for ineffective assistance of appellate counsel." (213 Ariz. at 568, ¶ 29)

"Conviction for the underlying felony does not automatically support a conviction for felony murder; the State must also prove that the child abuse caused the victim's death." (213 Ariz. at 568, ¶ 28)

FACTUAL BACKGROUND

Bennett left her two-year-old son, Greyson, with her roommate while she worked. After learning that Greyson had suffered a head injury and finding the roommate performing resuscitation, Bennett delayed taking him to the hospital despite medical advice to do so; Greyson later died from severe head injuries. The State's causation evidence consisted solely of testimony from the emergency-room physician, who said earlier treatment might have improved Greyson's chances of survival but acknowledged that he was speculating.

PROCEDURAL HISTORY

Bennett was convicted of felony murder, child abuse, and possession of methamphetamine and received a life sentence for felony murder. Her first post-conviction-relief petition was denied, and the court of appeals affirmed her convictions and denied relief without addressing the causation component of the felony-murder conviction. The superior court dismissed her second petition as precluded under Arizona Rule of Criminal Procedure 32.2(a), although it also addressed the merits and found the evidence sufficient; the court of appeals denied review. The Arizona Supreme Court vacated the court of appeals' order, reversed the superior court's denial, and remanded for a hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must hold a new hearing on the merits of Bennett's ineffective-assistance-of-appellate-counsel claim. It must first determine whether appellate counsel's performance fell below objectively reasonable standards and then determine whether Bennett was prejudiced, including whether the court of appeals would have reversed the felony-murder conviction had the sufficiency issue been raised. If prejudice is established, the superior court should vacate the felony-murder conviction.

CASES CITED

- State v. Spreitz, 202 Ariz. 1, 39 P.3d 525 (2002)
- State v. Marlow, 163 Ariz. 65, 786 P.2d 395 (1989)
- State v. Suarez, 137 Ariz. 368, 670 P.2d 1192 (App. 1983)
- State v. Krum, 183 Ariz. 288, 903 P.2d 596 (1995)
- State v. Runningeagle, 176 Ariz. 59, 859 P.2d 169 (1993)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Salazar, 146 Ariz. 540, 707 P.2d 944 (1985)
- State v. Valdez, 167 Ariz. 328, 806 P.2d 1376 (1991)
- State v. Herrera, 183 Ariz. 642, 905 P.2d 1377 (App. 1995)
- Smith v. Robbins, 528 U.S. 259 (2000)
- Gray v. Greer, 800 F.2d 644 (7th Cir. 1986)
- State v. Mathers, 165 Ariz. 64, 796 P.2d 866 (1990)
- State v. Lawson, 144 Ariz. 547, 698 P.2d 1266 (1985)

- Ex parte Lucas, 792 So. 2d 1169 (Ala. 2000)
- State v. Muro, 269 Neb. 703, 695 N.W.2d 425 (2005)
- State v. Fernane, 185 Ariz. 222, 914 P.2d 1314 (App. 1995)
- State v. Watton, 164 Ariz. 323, 793 P.2d 80 (1990)
- State v. Scrivner, 132 Ariz. 52, 643 P.2d 1022 (App. 1982)
- Duhamel v. Collins, 955 F.2d 962 (5th Cir. 1992)

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