

SUPREME COURT OF VIRGINIA

Brown v. Commonwealth

Brown · No. Record No. 131038 · Decided October 31, 2014

SUMMARY

The Supreme Court of Virginia affirmed the Court of Appeals' judgment upholding Derrell Renard Brown's conviction for possessing heroin with intent to distribute. The court held that an indigent defendant has no Sixth Amendment right to substitute retained counsel of choice absent a factual basis showing that he could afford counsel or that counsel was willing to represent him without payment. The circuit court therefore did not err in denying Brown's day-of-trial continuance request.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Elizabeth A. McClanahan; All the Justices
JURISDICTION	Virginia
DECIDED	October 31, 2014
DOCKET	Record No. 131038
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brown appealed the Court of Appeals of Virginia's judgment upholding his conviction after the circuit court denied his day-of-trial motion for a continuance to retain counsel of his choice.
STANDARD OF REVIEW	A trial court's denial of a continuance to obtain counsel of choice is reviewed under an abuse-of-discretion framework, including balancing the defendant's choice-of-counsel interest against fairness and calendar demands. The court first applied a legal sufficiency analysis to determine whether Brown established a factual predicate for invoking the Sixth Amendment right to counsel of choice.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential.
PARTIES	Derrell Renard Brown v. Commonwealth of Virginia

TOPICS

- right to counsel
- sixth amendment
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Sixth Amendment gave Brown, an indigent defendant represented by court-appointed counsel, a right to substitute privately retained counsel of his choosing when he presented no evidence that his financial status had changed or that a lawyer was available to represent him without payment.
2. Whether the circuit court violated Brown's Sixth Amendment rights or abused its discretion by denying his day-of-trial motion for a continuance and proceeding with his appointed counsel.

HOLDINGS

1. The Sixth Amendment right to counsel of choice does not extend to a defendant who requires court-appointed counsel. An indigent defendant must establish a factual predicate showing that he no longer requires appointed counsel, that another person will fund private counsel, or that an attorney is willing to represent him without payment.
2. The circuit court did not err in denying Brown's continuance motion or in proceeding to trial with his court-appointed counsel because Brown had not established a factual predicate for substitution of counsel under the Sixth Amendment.

KEY QUOTATIONS

"This constitutional right to counsel, however, does not guarantee that an indigent defendant will receive representation by counsel of his own choosing." (at 3)

"Accordingly, Brown's continuance request was deficient, as a matter of law, because, when made, he established no factual predicate for seeking substitution of other counsel in place of his court appointed counsel under the authority of the Sixth Amendment." (at 5)

"For these reasons, we conclude that the circuit court did not commit error under the Sixth Amendment in denying Brown's motion for a continuance for the purported purpose of retaining counsel of his choice." (at 6)

FACTUAL BACKGROUND

After indictment, Brown established indigency and obtained court-appointed counsel; attorney Catherine Rusz was later appointed after a conflict with prior counsel. On the day of trial, Rusz advised the circuit court that new employment might prevent her from representing Brown at sentencing and requested a continuance, while Brown sought to retain private counsel so that one lawyer would handle the entire case. Brown presented no evidence that his financial circumstances had changed, that another person would fund private counsel, or that a lawyer had agreed to represent him pro bono. The circuit court found Rusz competent and prepared, denied the continuance, and proceeded to trial, resulting in Brown's conviction.

PROCEDURAL HISTORY

The circuit court convicted Brown of possessing heroin with intent to distribute and denied his motion for a continuance and post-trial motion alleging a Sixth Amendment violation. The Court of Appeals of Virginia denied his petition for appeal in a per curiam order. The Supreme Court of Virginia awarded Brown an appeal and affirmed the Court of Appeals' judgment.

DISPOSITION

affirmed

CASES CITED

- Kaley v. United States, 134 S. Ct. 1090, 1103 (2014)
- Strickland v. Washington, 466 U.S. 668, 684-85 (1984)
- Scott v. Illinois, 440 U.S. 367, 373-74 (1979)
- Argersinger v. Hamlin, 407 U.S. 25, 37-40 (1972)
- Gideon v. Wainwright, Gideon v. Wainwright, 372 U.S. 335, 344-45 (1963)
- Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-26 (1989)
- United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 148, 151-52 (2006)
- Wheat v. United States, 486 U.S. 153, 159 (1988)
- United States v. Basham, 561 F.3d 302, 325 (4th Cir. 2009)
- Miller v. Smith, 115 F.3d 1136, 1143 (4th Cir. 1997)