

SUPREME COURT OF ARKANSAS

Allen v. Kelley

2016 Ark. 70 (2016) · No. CV-15-573 · Decided February 18, 2016

SUMMARY

The Arkansas Supreme Court dismissed David Lee Allen’s appeal from the denial of his petition for a writ of habeas corpus, concluding that he could not prevail. The court held that Allen’s ineffective-assistance, sentencing-age, and jury-selection claims either were not cognizable in habeas proceedings or did not establish that the judgment was facially invalid or that the trial court lacked jurisdiction. His motion to file a belated brief was deemed moot.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	February 18, 2016
DOCKET	CV-15-573
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the Lee County Circuit Court's dismissal of a petition for writ of habeas corpus; the appellant also moved to file a belated brief.
STANDARD OF REVIEW	A denial of habeas relief is not reversed unless the circuit court's findings are clearly erroneous. An appeal from an order denying post-conviction relief, including habeas relief, will not proceed when it is clear that the appellant could not prevail.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	David Lee Allen v. Wendy Kelley, Director, Arkansas Department of Correction

TOPICS

- state post-conviction relief
- habeas corpus
- appellate procedure
- ineffective assistance
- cruel and unusual punishment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Allen's ineffective-assistance claims were cognizable in a habeas proceeding.
2. Whether Allen's age-based challenge to his life sentence established that the judgment was facially invalid or that the sentence was illegal under *Graham v. Florida*.
3. Whether Allen's claims concerning the use of peremptory challenges established a basis for habeas relief.
4. Whether the appeal should be dismissed because Allen could not prevail and, consequently, whether his motion to file a belated brief was moot.

HOLDINGS

1. An appeal from an order denying a petition for post-conviction relief, including habeas relief, will not be permitted to proceed when it is clear that the appellant could not prevail.
2. Claims alleging ineffective assistance of trial counsel are not cognizable in a habeas proceeding.
3. A petitioner who was older than eighteen at the time of the offense cannot invoke *Graham v. Florida*'s juvenile-sentencing rule merely by asserting that a twenty-one-year-old has diminished culpability comparable to a juvenile; such a claim did not establish that Allen's judgment was invalid or his sentence illegal.
4. Claims concerning counsel's and the State's use of peremptory challenges do not support habeas relief when they do not show that the judgment is facially invalid or that the trial court lacked jurisdiction.

KEY QUOTATIONS

"An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward when it is clear that the appellant could not prevail." (at 1)

"A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a trial court lacked jurisdiction over the cause." (at 1)

"A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case or argue issues that were, or could have been, settled at trial or on the record on direct appeal from the judgment." (at 4)

FACTUAL BACKGROUND

Allen was convicted of aggravated robbery after a third trial and received a life sentence, along with a concurrent six-year sentence for possession of a firearm by a felon. In his habeas petition, he alleged ineffective assistance of trial counsel, challenged his life sentence based on his age and *Graham v. Florida*, and asserted that the use of peremptory challenges violated his right to a fair and impartial jury. He did not allege that his sentence exceeded the statutory maximum or that the judgment was facially invalid, and he did not establish that the trial court lacked jurisdiction.

PROCEDURAL HISTORY

Allen was convicted of aggravated robbery and sentenced to life imprisonment, with a concurrent six-year sentence for possession of a firearm by a felon. In 2015, he filed a habeas petition in the Lee County Circuit Court, which dismissed the petition. After the circuit court entered a supplemental order, Allen lodged an appeal and moved to file a belated brief. The Supreme Court of Arkansas dismissed the appeal because Allen could not prevail and held the motion moot.

DISPOSITION

dismissed

CASES CITED

- Allen v. State, 277 Ark. 380, 641 S.W.2d 710 (1982)
- Allen v. State, 281 Ark. 1, 660 S.W.2d 922 (1983)
- Daniels v. Hobbs, 2011 Ark. 192 (per curiam)
- Hobbs v. Gordon, 2014 Ark. 225, 434 S.W.3d 364
- Fields v. Hobbs, 2013 Ark. 416
- Young v. Norris, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam)
- Woodson v. Hobbs, 2015 Ark. 304, 467 S.W.3d 147 (per curiam)
- McConaughy v. Lockhart, 310 Ark. 686, 840 S.W.2d 166 (1992)
- Graham v. Florida, Graham v. Florida, 560 U.S. 48 (2010)
- Hobbs v. Turner, 2014 Ark. 19, 431 S.W.3d 283
- Hobbs v. Hodge, 2015 Ark. 207, 461 S.W.3d 704
- Atkins v. State, 2014 Ark. 393, 441 S.W.3d 19 (per curiam)
- Grissom v. State, 2013 Ark. 417 (per curiam)
- Tucker v. Hobbs, 2014 Ark. 449 (per curiam)
- Meny v. Norris, 340 Ark. 418, 13 S.W.3d 143 (2000)
- Benton v. State, 2013 Ark. 385 (per curiam)
- Quezada v. Hobbs, 2014 Ark. 396, 441 S.W.3d 910 (per curiam)