

SUPREME COURT OF GEORGIA

Hillman v. Johnson

297 Ga. 609 (2015) · No. S15A0097 · Decided June 29, 2015

SUMMARY

The Supreme Court of Georgia addressed whether Georgia's recidivist sentencing statute, OCGA § 17-10-7(a), applies to a conviction for possession of a firearm by a convicted felon under OCGA § 16-11-131. The court held that the recidivist statute does not apply to the felon-in-possession conviction because doing so would render that statute's one-to-five-year sentencing range meaningless, but it does apply to other felony convictions in the same case. The court affirmed in part, reversed in part, and remanded for resentencing on the firearm-possession conviction.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice
JURISDICTION	Georgia
DECIDED	June 29, 2015
DOCKET	S15A0097
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hillman appealed the denial of his state habeas corpus petition alleging ineffective assistance of counsel in connection with recidivist sentencing.
STANDARD OF REVIEW	Ineffective assistance of counsel claims are reviewed under Strickland v. Washington, requiring proof of professionally deficient performance and a reasonable probability of a more favorable result absent the deficiency. The habeas court's legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Marvin Hillman, III v. Johnson, Warden

TOPICS

state post-conviction relief ineffective assistance sentencing statutory interpretation appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether counsel was ineffective for failing to challenge the use of Hillman's prior felony conviction to impose the maximum sentence for the firearm-possession conviction under OCGA § 17-10-7(a).
2. Whether OCGA § 17-10-7(a) applies to convictions for offenses that do not include a prior felony conviction as an element when the same prior conviction also supports a felon-in-possession conviction.
3. Whether Hillman established Strickland prejudice from counsel's failure to challenge the five-year sentence for possession of a firearm by a convicted felon.

HOLDINGS

1. OCGA § 17-10-7(a) does not require the maximum sentence for a violation of OCGA § 16-11-131 because applying the recidivist statute in that context would render the firearm-possession statute's one-to-five-year sentencing range meaningless.
2. OCGA § 17-10-7(a) applies to convictions for crimes that do not have the defendant's prior felony conviction as an element, even when that same prior conviction also supports a felon-in-possession conviction in the same case.
3. Hillman could not establish Strickland prejudice from counsel's failure to rely on the Court of Appeals' post-King cases because those cases incorrectly extended King; the recidivist sentences for the other offenses were legally proper.
4. Hillman established deficient performance and a reasonable probability of prejudice because counsel failed to invoke King and challenge the mandatory five-year sentence for firearm possession.

KEY QUOTATIONS

“Even though sentencing does not concern the defendant’s guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in Strickland prejudice because “any amount of [additional] jail time has Sixth Amendment significance.”” (611)

“King’s rationale, which we endorsed in Slaughter, has no application to crimes that do not have as an element the defendant’s prior conviction of a felony.” (612)

FACTUAL BACKGROUND

In 2008, Hillman was convicted of two counts of armed robbery, burglary, aggravated assault, and possession of a firearm by a convicted felon arising from an armed home invasion. The firearm-possession charge was based on a prior felony conviction, and the trial court used that same conviction to impose the maximum authorized sentence under Georgia's recidivist statute, including a five-year sentence for firearm possession. Hillman's trial and appellate counsel did not challenge the use of the prior conviction for recidivist sentencing.

PROCEDURAL HISTORY

Hillman was convicted in the Superior Court of Peach County of armed robbery, burglary, aggravated assault, and possession of a firearm by a convicted felon. The Court of Appeals affirmed his convictions and sentences. He later filed a habeas petition in the Superior Court of Hancock County, which denied relief after an evidentiary hearing. The Supreme Court of Georgia granted Hillman's application for a certificate of probable cause to appeal, affirmed in part, reversed in part, and remanded for resentencing on the firearm-possession conviction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The habeas court must vacate Hillman's five-year sentence for possession of a firearm by a convicted felon and remand the case to the Superior Court of Peach County for resentencing on that conviction within the one-to-five-year range authorized by OCGA § 16-11-131. The denial of relief on the remaining sentencing claims was affirmed.

CASES CITED

- King v. State, 169 Ga. App. 444, 313 S.E.2d 144 (1984)
- State v. Slaughter, 289 Ga. 344, 711 S.E.2d 651 (2011)
- Arkwright v. State, 275 Ga. App. 375, 620 S.E.2d 618 (2005)
- Allen v. State, 268 Ga. App. 519, 602 S.E.2d 250 (2004)
- State v. Freeman, 198 Ga. App. 553, 402 S.E.2d 529 (1991)
- Harris v. State, 322 Ga. App. 87, 744 S.E.2d 82 (2013)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Williams v. Taylor, 529 U.S. 362, 392 (2000)
- Lockhart v. Fretwell, 506 U.S. 364 (1993)
- Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376 (2012)
- Elrod v. Caldwell, 232 Ga. 876, 209 S.E.2d 207 (1974)
- Hillman v. State, 296 Ga. App. 310, 674 S.E.2d 370 (2009)