

SUPREME COURT OF SOUTH DAKOTA

Kleinsasser v. Weber

2016 S.D. 16 · No. #27454 · Decided March 2, 2016

SUMMARY

The Supreme Court of South Dakota affirmed the denial of Herman Kleinsasser’s habeas corpus petition. The court rejected his claims of ineffective assistance of counsel, breach of the plea agreement, and sentencing-court error concerning advisement of Boykin rights. The court held that counsel’s performance was not constitutionally deficient, the State’s sentencing recommendation complied with the plea agreement, and the restitution-related claim did not warrant relief.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Kern, Justice; Gilbertson, Chief Justice; Zinter, Justice; Severson, Justice; Pfeifle, Circuit Court Judge, sitting for Wilbur, Justice
JURISDICTION	South Dakota
DECIDED	March 2, 2016
DOCKET	#27454
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from denial of a petition for a writ of habeas corpus following a two-day evidentiary trial in the circuit court. The Supreme Court granted review after the circuit court issued a certificate of probable cause.
STANDARD OF REVIEW	Habeas review is limited because habeas corpus is a collateral attack on a final judgment. The petitioner must prove entitlement to relief by a preponderance of the evidence. The Supreme Court defers to the habeas court's findings on primary facts unless clearly erroneous, but reviews de novo whether counsel's conduct constituted ineffective assistance.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Herman Kleinsasser v. Doug Weber, Warden, South Dakota State Penitentiary

TOPICS

state post-conviction relief

habeas corpus

ineffective assistance

plea bargaining

sentencing

PRACTICE AREAS

state post-conviction relief

criminal procedure

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QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by inadequately investigating the case, failing to develop defenses, recommending or negotiating the plea while Kleinsasser was allegedly impaired, and failing to seek withdrawal of the plea or object to the State's sentencing position.
2. Whether the State breached the plea agreement by recommending an eighty-year sentence and by requesting payment of prosecution-related costs.
3. Whether the sentencing court was required to advise Kleinsasser of or confirm his waiver of Boykin rights at the sentencing hearing.

HOLDINGS

1. Kleinsasser failed to prove ineffective assistance of counsel because he did not establish constitutionally deficient performance or prejudice. In the plea context, he also failed to show gross error in counsel's recommendation or that, absent counsel's alleged errors, he would have rejected the plea and insisted on trial.
2. The State did not breach the plea agreement by recommending an eighty-year sentence. The agreement permitted a nonbinding sentencing recommendation of fifty to eighty years, and an eighty-year recommendation fell within that agreed range.
3. The State did not breach the plea agreement by requesting prosecution-related costs, and Kleinsasser was lawfully required to pay allowable costs of prosecution. Although the judgment incorrectly labeled the award as restitution to Sully County, the award was properly treated as costs of prosecution because the county was not a statutory victim entitled to restitution.
4. The sentencing court was not required to advise Kleinsasser of his Boykin rights or confirm the prior advisement at the sentencing hearing. The relevant duty to advise the defendant and establish a knowing and voluntary waiver arose when the guilty plea was entered.

KEY QUOTATIONS

"The first prong requires that the defendant establish that counsel's representation fell below an objective standard of reasonableness." (§ 17)

"A defense of diminished capacity is relevant to a specific intent crime, but not to a general intent crime." (§ 24)

"voluntary intoxication is not a defense to [a] general intent crime[]." (§ 24)

"when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." (§ 31)

FACTUAL BACKGROUND

Kleinsasser shot and killed his wife in their home while their six children were present, then shot himself. He was indicted for first-degree murder, second-degree murder, and first-degree manslaughter, and later accepted a written plea agreement under which the murder charges would be dismissed and the State would recommend a sentencing cap of fifty to eighty years. He pleaded guilty to first-degree manslaughter and received an eighty-year sentence, along with an order to reimburse Sully County \$88,611.79 for prosecution-related costs.

PROCEDURAL HISTORY

Kleinsasser pleaded guilty to first-degree manslaughter and received an eighty-year sentence plus an order to reimburse Sully County for prosecution costs. After the Supreme Court summarily affirmed his direct appeal, he filed a state habeas petition alleging ineffective assistance, breach of the plea agreement, and errors concerning his plea and sentencing. The circuit court denied relief after an evidentiary hearing, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Vanden Hoek v. Weber, 2006 S.D. 102, 724 N.W.2d 858
- Crutchfield v. Weber, 2005 S.D. 62, 697 N.W.2d 756
- Oleson v. Young, 2015 S.D. 73, 869 N.W.2d 452
- McDonough v. Weber, 2015 S.D. 1, 859 N.W.2d 26
- Pieper v. Pieper, 2013 S.D. 98, 841 N.W.2d 781
- State v. Craig, 2014 S.D. 43, 850 N.W.2d 828
- Fast Horse v. Weber, 2013 S.D. 74, 838 N.W.2d 831
- Hofman v. Weber, 2002 S.D. 11, 639 N.W.2d 523
- Weddell v. Weber, 2000 S.D. 3, 604 N.W.2d 274
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Thomas, 2011 S.D. 15, 796 N.W.2d 706
- Steichen v. Weber, 2009 S.D. 4, 760 N.W.2d 381
- Owens v. Russell, 2007 S.D. 3, 726 N.W.2d 610
- Coon v. Weber, 2002 S.D. 48, 644 N.W.2d 638
- Brakeall v. Weber, 2003 S.D. 90, 668 N.W.2d 79
- State v. Mulligan, 2007 S.D. 67, 736 N.W.2d 808
- State v. Schouten, 2005 S.D. 122, 707 N.W.2d 820
- State v. Primeaux, 328 N.W.2d 256 (S.D. 1982)
- State v. Waldner, 2005 S.D. 11, 692 N.W.2d 187

- Elrod v. Gen. Cas. Co. of Wis., 1997 S.D. 90, 566 N.W.2d 482
- Vanden Hoek v. Weber, 2006 S.D. 102, 724 N.W.2d 858
- Santobello v. New York, 404 U.S. 257 (1971)
- State v. Ryyth, 2001 S.D. 50, 626 N.W.2d 290
- State v. Sprecher, 2000 S.D. 17, 606 N.W.2d 138
- State v. Garnett, 488 N.W.2d 695 (S.D. 1992)
- State v. No Neck, 458 N.W.2d 364 (S.D. 1990)
- State v. Olson-Lame, 2001 S.D. 51, 624 N.W.2d 833
- Boykin v. Alabama, 395 U.S. 238 (1969)
- Monette v. Weber, 2009 S.D. 77, 771 N.W.2d 920
- State v. Bilben, 2014 S.D. 24, 846 N.W.2d 336
- Garcia v. State, 2014 S.D. 5, 843 N.W.2d 345
- Rosen v. Weber, 2012 S.D. 15, 810 N.W.2d 763