

SUPREME COURT OF OHIO

State ex rel. Shackelford v. Moore

116 Ohio St. 3d 310 (2007) · Decided December 12, 2007

SUMMARY

The Ohio Supreme Court affirmed dismissal of Phillip G. Shackelford’s habeas corpus petition challenging his criminal sentence. The court held that sentencing errors are not cognizable in habeas corpus because adequate remedies existed through appeal and post-conviction relief, and that the cited sentencing decisions did not provide retroactive grounds for habeas relief.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Pfeifer; Lundberg Stratton; O'Connor; O'Donnell; Lanzinger; Cupp
JURISDICTION	Ohio
DECIDED	December 12, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from the Warren County Court of Appeals' dismissal of a petition for a writ of habeas corpus under Civ.R. 12(B)(6).
STANDARD OF REVIEW	The court reviewed the dismissal of the habeas corpus petition as an appeal from a Civ.R. 12(B)(6) judgment; the opinion does not expressly state a separate standard of review.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Phillip G. Shackelford v. Ernie Moore, Warden, Lebanon Correctional Institution

TOPICS

- habeas corpus
- sentencing
- post-conviction relief
- appellate procedure
- motions to dismiss

PRACTICE AREAS

- Habeas corpus
- Criminal sentencing
- Appellate procedure
- Post-conviction relief

QUESTIONS PRESENTED

1. Whether alleged sentencing errors rendered Shackleford's confinement jurisdictionally invalid and cognizable in habeas corpus.
2. Whether Foster, Blakely, or Apprendi supplied a basis for retroactive habeas corpus relief after Shackleford's conviction and sentence had become final on direct review.
3. Whether the prior unsuccessful direct appeal precluded or otherwise failed to bar the requested extraordinary habeas corpus relief.

HOLDINGS

1. Sentencing errors are not jurisdictional and are not cognizable in habeas corpus when the petitioner has or had an adequate remedy in the ordinary course of law, such as a direct appeal or postconviction relief.
2. Foster does not authorize extraordinary habeas corpus relief for sentencing errors, and its holding concerning unconstitutional sentencing statutes applies only to cases pending on direct review; the decisions relied on by Shackleford did not apply retroactively to his case, which was final on direct review.
3. The fact that Shackleford had already unsuccessfully pursued a direct appeal did not entitle him to extraordinary habeas corpus relief.

KEY QUOTATIONS

“We have consistently held that sentencing errors are not jurisdictional and are not cognizable in habeas corpus.” (¶ 5)

“Based on the foregoing, the court of appeals properly dismissed Shackleford’s petition for a writ of habeas corpus. Therefore, we affirm the judgment of the court of appeals.” (¶ 8)

FACTUAL BACKGROUND

The Montgomery County Court of Common Pleas convicted Shackleford in 2000 of two rapes and accompanying firearm specifications and sentenced him to an aggregate prison term of 23 years. His direct appeal was unsuccessful, and the Supreme Court of Ohio declined further review. After Foster was decided, Shackleford sought habeas corpus relief, claiming that the trial court had improperly enhanced his sentence and requesting release from prison.

PROCEDURAL HISTORY

In 2000, the Montgomery County Court of Common Pleas convicted Shackleford of two counts of rape and firearm specifications and imposed an aggregate 23-year prison sentence. The court of appeals affirmed the conviction and sentence, and the Supreme Court of Ohio declined further review. In May 2007, Shackleford filed a habeas corpus petition in the Warren County Court of Appeals, asserting that his sentence had been improperly enhanced under sentencing principles discussed in Foster, Blakely, and Apprendi. The court of appeals granted the warden's Civ.R. 12(B)(6) motion and dismissed the petition; the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Shackelford, Montgomery App. No. 18297, 2001 WL 468415 (May 4, 2001)
- State v. Shackelford, 95 Ohio St. 3d 1460, 2002-Ohio-2230, 767 N.E.2d 1178
- State ex rel. Sneed v. Anderson, 114 Ohio St. 3d 11, 2007-Ohio-2454, 866 N.E.2d 1084
- Majoros v. Collins, 64 Ohio St. 3d 442, 596 N.E.2d 1038 (1992)
- State ex rel. Jaffal v. Calabrese, 105 Ohio St. 3d 440, 2005-Ohio-2591, 828 N.E.2d 107
- State v. Foster, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470
- Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- Wells v. Bradshaw, Richland App. No. 06CA35, 2006-Ohio-4636, 2006 WL 2578358
- In re Dean, 375 F.3d 1287, 1290 (11th Cir. 2004)
- Humphress v. United States, 398 F.3d 855 (6th Cir. 2005)
- State v. Robinson, Franklin App. No. 06AJP-368, 2006-Ohio-6649, 2006 WL 3703977
- Russell v. Mitchell, 84 Ohio St. 3d 328, 703 N.E.2d 1249 (1999)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} This is an appeal from a judgment dismissing a petition for a writ of habeas corpus. Because the appellant had an adequate remedy in the ordinary course of law to raise his claim, we affirm. {¶ 2} In 2000, the Montgomery County Court of Common Pleas convicted appellant, Phillip G. Shackelford, of two counts of rape and accompanying firearm specifications and sentenced him to an aggregate prison term of 23 years.

On appeal, the court of appeals affirmed. State v. Shackelford (May 4, 2001), Montgomery App. No. 18297, 2001 WL 468415. We did not accept Shackelford's further appeal for review. State v. Shackelford, 95 Ohio St.3d 1460, 2002-Ohio-2230, 767 N.E.2d 1178. *311{¶ 3} In May 2007, Shackelford filed a petition in the Warren County Court of Appeals for a writ of habeas corpus to compel appellee, Lebanon Correctional Institution Warden Ernie Moore, to release him from prison.

Shackelford claimed that the trial court improperly enhanced his sentence, relying on State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470; Blakely v. Washington (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403; and Apprendi v. New Jersey (2000), 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435, among other cases. Moore filed a Civ.R. 12(B)(6) motion to dismiss Shackelford's petition for failure to state a claim upon which relief can be granted.

The court of appeals granted the motion and dismissed the petition. {¶ 4} In his appeal as of right, Shackleford contends that the court of appeals erred in dismissing his petition. For the following reasons, Shackleford's contention lacks merit. {¶ 5} First, “ ‘[w]e have consistently held that sentencing errors are not jurisdictional and are not cognizable in habeas corpus.’ ” State ex rel.

Sneed v. Anderson, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084, ¶ 7, quoting Majoros v. Collins (1992), 64 Ohio St.3d 442, 443, 596 N.E.2d 1038. Shackleford “has or had adequate remedies in the ordinary course of law, e.g., appeal and postconviction relief, for review of any alleged sentencing error.” State ex rel. Jaffal v. Calabrese, 105 Ohio St.3d 440, 2005-Ohio-2591, 828 N.E.2d 107, ¶ 5. {¶ 6} Second, in Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, at ¶ 104, we limited the application of our holding — that certain sentencing statutes were unconstitutional because they required judicial fact-finding before imposition of a more severe sentence — to cases pending on direct review.

In those cases in which Foster applied, we ordered new sentencing hearings rather than release from prison. We also did not hold that extraordinary relief in habeas corpus is available to rectify sentencing errors. See also Wells v. Bradshaw, Richland App. No. 06CA35, 2006-Ohio-4636, 2006 WL 2578358, ¶ 14-16 {Foster does not support habeas corpus claim}.

The decisions Shackleford relies on do not apply retroactively to cases that are already final on direct review. See generally In re Dean (C.A.11, 2004), 375 F.3d 1287, 1290; Humphress v. United States (C.A.6, 2005), 398 F.3d 855; State v. Robinson, Franklin App. No. 06AJP-368, 2006-Ohio-6649, 2006 WL 3703977, ¶ 9 {“Blakely does not recognize a new federal or state right that applies retroactively”}. {¶ 7} Finally, the fact that Shackleford has already unsuccessfully pursued a direct appeal of his sentence does not entitle him to the requested extraordinary relief.

Sneed, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084, at ¶ 9, citing Russell v. Mitchell (1999), 84 Ohio St.3d 328, 703 N.E.2d 1249. Phillip G. Shackleford, pro se. Marc Dann, Attorney General, and Diane Mallory, Assistant Attorney General, for appellee. {¶ 8} Based on the foregoing, the court of appeals properly dismissed Shackleford's petition for a writ of habeas corpus.

Therefore, we affirm the judgment of the court of appeals. Judgment affirmed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.