

SUPREME COURT OF THE STATE OF DELAWARE

Perkins v. State

Perkins v. State · No. No. 648, 2014 · Decided January 13, 2015

SUMMARY

The Delaware Supreme Court dismissed Leon K. Perkins’s appeal from an order denying his motion for appointment of counsel in connection with further post-conviction proceedings. The Court held that the order was interlocutory and not appealable in a criminal matter before entry of a final order on the post-conviction motion.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Jr., Chief Justice; Holland, Justice; Valihura, Justice
JURISDICTION	Delaware
DECIDED	January 13, 2015
DOCKET	No. 648, 2014
DISPOSITION	dismissed
PROCEDURAL POSTURE	Perkins appealed the Superior Court's interlocutory order denying his motion for appointment of counsel to pursue further postconviction remedies. The Delaware Supreme Court issued a notice to show cause under Supreme Court Rule 29(b) and dismissed the appeal for lack of jurisdiction.
PRECEDENTIAL VALUE	Not stated in the opinion
PARTIES	Leon K. Perkins v. State of Delaware

TOPICS

- appellate jurisdiction
- interlocutory appeal
- appellate procedure
- post-conviction relief
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure
- postconviction relief
- constitutional law

QUESTIONS PRESENTED

1. Whether the Delaware Supreme Court had jurisdiction to review an interlocutory Superior Court order denying appointment of counsel in a criminal postconviction matter.
2. Whether the denial of appointment of counsel was appealable as a collateral order before entry of a final order on the postconviction motion.

HOLDINGS

1. Under the Delaware Constitution, the Supreme Court may review only a final judgment in a criminal case; an interlocutory order is not appealable absent an applicable exception.
2. The denial of a motion for appointment of counsel to pursue postconviction remedies is not appealable as a collateral order before entry of a final order on the postconviction relief motion.

KEY QUOTATIONS

“Under the Delaware Constitution only a final judgment may be reviewed by the Court in a criminal case.”
(2)

“The denial of Perkins’ motion is not appealable as a collateral order before the entry of a final order on a motion for postconviction relief.” (2)

FACTUAL BACKGROUND

Perkins was convicted of first-degree murder and related weapon offenses in 2005 and sentenced to mandatory life imprisonment plus sixteen years. After unsuccessful direct and postconviction proceedings, he sought appointment of counsel to pursue further postconviction remedies. The Superior Court denied that motion, and Perkins attempted an immediate appeal.

PROCEDURAL HISTORY

Perkins was convicted in 2005 of first-degree murder and related weapons offenses and received mandatory life imprisonment plus sixteen years. The Delaware Supreme Court affirmed his convictions and sentence on direct appeal and later affirmed the denial of postconviction relief. After the Superior Court denied his motion for appointment of counsel on November 5, 2014, Perkins appealed; the Supreme Court dismissed the appeal as an impermissible interlocutory criminal appeal.

DISPOSITION

dismissed

CASES CITED

- Perkins v. State, 920 A.2d 391 (Del. 2007)
- State v. Perkins, 2008 WL 2406231 (Del. Super. June 11, 2008)
- State v. Perkins, 2008 WL 5191831 (Del. Dec. 11, 2008)
- State v. Cooley, 430 A.2d 789, 791 (Del. 1981)

- Lopez v. State, 2014 WL 3586494 (Del. July 21, 2014)
- Harris v. State, 2013 WL 4858990 (Del. Sept. 10, 2013)
- Brown v. State, 2012 WL 4466314 (Del. Sept. 26, 2012)
- St. Louis v. State, 2012 WL 130877 (Del. Jan. 17, 2012)
- Robinson v. State, 704 A.2d 269, 271 (Del. 1998)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE LEON K. PERKINS, § § No. 648, 2014 Defendant Below, § Appellant, § Court Below: Superior Court § of the State of Delaware in and v. § for New Castle County § STATE OF DELAWARE, § § Plaintiff Below, § Cr. ID No. 0212008942 Appellee. § Submitted: December 3, 2014 Decided: January 13, 2015 Before STRINE, Chief Justice, HOLLAND and VALIHURA, Justices.

ORDER This 13th day of January 2015, upon consideration of the notice to show cause and the appellant's response, it appears to the Court that: (1) In 2005, the appellant, Leon K. Perkins, was convicted of Murder in the First Degree and related weapon offenses and was sentenced to mandatory life imprisonment plus sixteen years.

On direct appeal, this Court affirmed Perkins' convictions and sentence.¹ In 2008, the Court 1 Perkins v. State, 920 A.2d 391 (Del. 2007). affirmed the denial of Perkins' motion for postconviction relief under Superior Court Criminal Rule 61.2 (2) Perkins has appealed the Superior Court's November 5, 2014 order denying his motion for appointment of counsel.

By notice dated November 24, 2014, the Clerk directed that Perkins show cause under Supreme Court Rule 29(b) why the appeal should not be dismissed for this Court's lack of jurisdiction to entertain an interlocutory appeal in a criminal matter.³ (3) In his December 3, 2014 response to the notice to show cause, Perkins states that he is entitled to the appointment of counsel to pursue further postconviction remedies.

Perkins argues that, under the Delaware Constitution, this Court has jurisdiction to determine all appeals from the Superior Court in criminal cases, including his appeal from the Superior Court's November 5, 2014 order denying his motion for appointment of counsel.

(4) Perkins is mistaken. Under the Delaware Constitution only a final judgment may be reviewed by the Court in a criminal case.⁴ In this 2 State v. Perkins, 2008 WL 2406231 (Del. Super. June 11, 2008), aff'd, 2008 WL 5191831 (Del. Dec. 11, 2008). 3 See Del. Supr. Ct. R. 29(b) (governing involuntary dismissal upon notice of the Court). 4 Del. Const. art. IV, § 11(1)(b); State v. Cooley, 430 A.2d 789, 791 (Del.

1981). 2 case, the Superior Court's November 5, 2014 order denying Perkins' motion for appointment of counsel is an interlocutory order.⁵ The denial of Perkins' motion is not appealable as a collateral order before the entry of a final order on a motion for postconviction relief.⁶ NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT: /s/ Leo E. Strine, Jr. Chief Justice 5 Accord *Lopez v. State*, 2014 WL 3586494 (Del. July 21, 2014); *Harris v. State*, 2013 WL 4858990 (Del. Sept. 10, 2013); *Brown v. State*, 2012 WL 4466314 (Del. Sept. 26, 2012) (dismissing appeals from Superior Court orders denying appointment of counsel as impermissible criminal interlocutory appeals). 6 See *St. Louis v. State*, 2012 WL 130877 (Del.

Jan. 17, 2012) (citing *Robinson v. State*, 704 A.2d 269, 271 (Del. 1998)). 3