

SUPREME COURT OF NEBRASKA

State v. Vela

297 Neb. 227 (2017) · No. No. S-16-465 · Decided July 21, 2017

SUMMARY

The Nebraska Supreme Court affirmed the denial, without an evidentiary hearing, of Erick F. Vela’s motion for postconviction relief. Vela alleged ineffective assistance of trial and appellate counsel concerning the timing of his guilty plea, a prosecutor’s relationship with a juror, Batson challenges, expert testing, jury instructions, and evidence of malice. The court held that the claims either failed to allege sufficient facts showing prejudice or were unsupported by the record, and it declined to consider an additional constitutional claim not presented to the district court.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Wright, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.; Inbody, Judge
JURISDICTION	Nebraska
DECIDED	July 21, 2017
DOCKET	No. S-16-465
DISPOSITION	affirmed
PROCEDURAL POSTURE	Vela appealed the Madison County District Court's order denying his amended motion for postconviction relief without an evidentiary hearing on six ineffective-assistance claims.
STANDARD OF REVIEW	The court reviews de novo whether a postconviction defendant alleged sufficient facts to demonstrate a constitutional violation or whether the record and files affirmatively show that the defendant is entitled to no relief. The facial validity of a prosecutor's race-neutral explanation for a peremptory strike is reviewed de novo; the trial court's factual determinations concerning persuasiveness and purposeful discrimination are reviewed for clear error.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Erick F. Vela v. State of Nebraska

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

sentencing

jury selection

PRACTICE AREAS

state post-conviction relief

criminal procedure

ineffective assistance of counsel

capital sentencing

jury selection

QUESTIONS PRESENTED

1. Whether Vela's constitutional claim challenging Nebraska's capital-sentencing scheme under *Hurst v. Florida* could be considered when it was not presented to or passed upon by the district court.
2. Whether the district court properly denied postconviction relief without an evidentiary hearing on Vela's claims that counsel was ineffective concerning the timing of his guilty plea.
3. Whether counsel was ineffective for failing to discover or challenge a personal relationship between a prosecutor and the presiding juror.
4. Whether appellate counsel was ineffective for failing to appeal the trial court's denial of Vela's Batson challenges.
5. Whether counsel was ineffective for failing to permit or present additional testing concerning Vela's intellectual and adaptive functioning.
6. Whether counsel was ineffective for failing to request a malice instruction or present evidence negating malice concerning the Lundell homicide used to support an aggravating circumstance.

HOLDINGS

1. A constitutional issue not presented to or passed upon by the trial court is not appropriate for consideration on appeal.
2. A postconviction court must grant an evidentiary hearing when the motion alleges facts that, if proved, would constitute a violation of the defendant's federal or state constitutional rights causing the judgment to be void or voidable. No hearing is required for conclusory allegations or when the record and files affirmatively show that the defendant is entitled to no relief.
3. To prevail on an ineffective-assistance claim under *Strickland*, a defendant must show deficient performance and a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different.
4. A claim of ineffective assistance of appellate counsel may be raised in postconviction review when it could not have been raised on direct appeal, and failure to raise an issue on appeal constitutes ineffective assistance only when there is a reasonable probability that including the issue would have changed the appeal's result.
5. Vela failed to allege facts showing that counsel's failure to secure an earlier guilty plea constituted deficient performance or caused prejudice.
6. Vela did not show prejudice from counsel's failure to challenge or strike a juror who was the prosecutor's pastor.

7. Appellate counsel was not ineffective for failing to appeal the trial court's denial of Vela's Batson challenges because there was no reasonable probability that the appeal would have changed the result.
8. Vela failed to show prejudice from counsel's alleged failure to permit additional adaptive-functioning testing because the State's expert conducted adaptive-behavior testing through alternative means and concluded that Vela's overall adaptive behavior was age-appropriate.
9. Vela failed to show prejudice from counsel's failure to request a malice instruction or present evidence negating malice concerning the Lundell homicide because evidence of the homicide, regardless of its degree, supported the aggravating circumstance of a substantial prior history of serious assaultive or terrorizing criminal activity.

KEY QUOTATIONS

“A court must grant an evidentiary hearing to resolve the claims in a postconviction motion when the motion contains factual allegations which, if proved, constitute an infringement of the defendant’s rights under the Nebraska or federal Constitution.” (232)

“To prevail on a claim of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel’s performance was deficient and that this deficient performance actually prejudiced the defendant’s defense.” (233)

“Regardless of the degree of homicide, such evidence supported a finding of the existence of the aggravating circumstance in § 29-2523(1)(a) of “a substantial prior history of serious or assaultive terrorizing criminal activity.”” (245)

FACTUAL BACKGROUND

Vela pleaded guilty in 2003 to five first degree murders and related offenses arising from an attempted bank robbery and subsequent crimes in Norfolk, Nebraska. A jury found five aggravating circumstances for each murder, and a three-judge panel imposed five death sentences. In postconviction proceedings, Vela alleged ineffective assistance concerning the timing of his plea, a relationship between a prosecutor and a juror, Batson challenges, intellectual-functioning evidence, and evidence or instructions concerning malice related to another homicide.

PROCEDURAL HISTORY

Vela pleaded guilty to five counts of first degree murder and related offenses and received five death sentences from a three-judge panel. The Nebraska Supreme Court affirmed his sentences on direct appeal. After the district court initially denied postconviction relief without an evidentiary hearing, the Nebraska Supreme Court vacated and remanded because the wrong hearing standard had been applied. On remand, the district court reconsidered and again denied relief without a hearing, leading to this appeal.

DISPOSITION

affirmed

CASES CITED

- State v. Vela, 279 Neb. 94, 777 N.W.2d 266 (2010)
- State v. Boche, 294 Neb. 912, 885 N.W.2d 523 (2016)
- Hurst v. Florida, 136 S. Ct. 616 (2016)
- State v. Watson, 295 Neb. 802, 891 N.W.2d 322 (2017)
- State v. Ely, 295 Neb. 607, 889 N.W.2d 377 (2017)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Starks, 294 Neb. 361, 883 N.W.2d 310 (2016)
- State v. Banks, 278 Neb. 342, 771 N.W.2d 75 (2009)
- State v. Oliveira-Coutinho, 291 Neb. 294, 865 N.W.2d 740 (2015)
- Batson v. Kentucky, 476 U.S. 79 (1986)
- State v. Galindo, 278 Neb. 599, 774 N.W.2d 190 (2009)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Moore v. Texas, 137 S. Ct. 1039 (2017)