

SUPREME COURT OF GEORGIA

Brown v. Baskin, 286 Ga. 681

690 S.E.2d 822 (2010) · No. S09A1956 · Decided March 15, 2010

SUMMARY

The Supreme Court of Georgia affirmed the grant of habeas corpus relief to Charles Baskin based on ineffective assistance of appellate counsel. The court held that appellate counsel was deficient for failing to raise trial counsel’s failure to preserve a Confrontation Clause challenge involving cross-examination of a key witness about pending criminal charges. The court also concluded that the error was prejudicial because the evidence was not overwhelming beyond a reasonable doubt.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice; All Justices
JURISDICTION	Georgia
DECIDED	March 15, 2010
DOCKET	S09A1956
DISPOSITION	affirmed
PROCEDURAL POSTURE	The warden appealed from a state habeas court order granting Baskin habeas corpus relief on the ground that appellate counsel rendered ineffective assistance by failing to raise trial counsel's failure to preserve a Confrontation Clause issue.
STANDARD OF REVIEW	The court accepted the habeas court's factual findings unless clearly erroneous and independently applied those facts to the law. Ineffective assistance of appellate counsel was evaluated under the two-prong Strickland standard.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential
PARTIES	Dennis Brown, Warden v. Charles Baskin

TOPICS

- state post-conviction relief
- ineffective assistance
- sixth amendment
- habeas corpus
- harmless error

PRACTICE AREAS

criminal post-conviction relief

criminal appellate procedure

ineffective assistance of counsel

constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether appellate counsel rendered ineffective assistance by failing to raise trial counsel's failure to preserve the defendant's right to cross-examine the victim about pending criminal charges.
2. Whether the failure to preserve and raise the Confrontation Clause issue prejudiced Baskin under Strickland.
3. Whether the trial counsel's error was harmless beyond a reasonable doubt in light of the evidence.

HOLDINGS

1. Appellate counsel performed deficiently by failing to raise trial counsel's failure to preserve the issue of cross-examining the victim about pending criminal charges, where counsel had notice of the issue and offered no strategic explanation for omitting it.
2. Baskin established prejudice because there was a reasonable probability that the outcome of his appeal would have been different had appellate counsel raised trial counsel's failure to preserve the cross-examination issue.
3. The court declined to find the Confrontation Clause error harmless beyond a reasonable doubt because the evidence was not so overwhelming that the error could not have affected the verdict.

KEY QUOTATIONS

"The reviewing court may not use hindsight to second-guess appellate counsel's strategy and tactical choices." (825)

"Under these circumstances, we cannot conclude, beyond a reasonable doubt, that the evidence was so overwhelming that trial counsel's error did not affect the result of Baskin's trial." (827)

FACTUAL BACKGROUND

Baskin and Ervin Head were jointly tried and convicted of armed robbery, hijacking a motor vehicle, and aggravated assault. The victim, Johane Eugene Blalock, had a pending criminal charge at the time of trial, and the defense sought to cross-examine him about that charge as a possible source of bias. Trial counsel failed to provide the court with supporting authority or otherwise preserve the issue, and appellate counsel failed to raise trial counsel's omission even after the Court of Appeals identified the Confrontation Clause issue in Head's related appeal. The victim was a key witness, and the evidence, although substantial, depended significantly on witness credibility and conflicting accounts.

PROCEDURAL HISTORY

Baskin was convicted of armed robbery, hijacking a motor vehicle, and aggravated assault, and the convictions were affirmed on direct appeal. He later sought habeas corpus relief alleging ineffective assistance of appellate counsel. The habeas court granted the writ, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Head v. State, 256 Ga.App. 624, 569 S.E.2d 548 (2002)
- Baskin v. State, 267 Ga.App. 711, 600 S.E.2d 599 (2004)
- Shorter v. Waters, 275 Ga. 581, 571 S.E.2d 373 (2002)
- Battles v. Chapman, 269 Ga. 702, 506 S.E.2d 838 (1998)
- Walker v. Williams, 282 Ga. 409, 409, 651 S.E.2d 59 (2007)
- Davis v. Alaska, 415 U.S. 308, 318(2), 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974)
- Mangum v. State, 274 Ga. 573, 576(2), 555 S.E.2d 451 (2001)
- Strickland v. Washington, 466 U.S. 668, 687, 698, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Sloan v. Sanders, 271 Ga. 299, 519 S.E.2d 219 (1999)
- Nelson v. Hall, 275 Ga. 792, 793-794, 573 S.E.2d 42 (2002)
- Lajara v. State, 263 Ga. 438, 440(3), 435 S.E.2d 600 (1993)
- Head v. Ferrell, 274 Ga. 399, 404(V), 554 S.E.2d 155 (2001)
- Delaware v. Van Arsdall, 475 U.S. 673, 683, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)
- Horne v. State, 281 Ga. 799, 808(5), 642 S.E.2d 659 (2007)
- Smith v. State, 284 Ga. 599, 609(4) n. 21, 669 S.E.2d 98 (2008)
- Freeman v. State, 284 Ga. 830, 834(4), 672 S.E.2d 644 (2009)
- Bass v. State, 285 Ga. 89, 93, 674 S.E.2d 255 (2009)
- Pinckney v. State, 285 Ga. 458, 459(2), 678 S.E.2d 480 (2009)