

SUPREME COURT OF GEORGIA

Griffin v. Terry

291 Ga. 326 (2012) · Decided July 2, 2012

SUMMARY

The Supreme Court of Georgia affirmed the denial of Melvin Griffin’s habeas corpus petition. The court held that Griffin’s substantive claim concerning his absence during a juror colloquy was procedurally defaulted, and that he failed to establish actual prejudice from appellate counsel’s failure to raise the issue. The court clarified that presumed prejudice applicable on direct appeal is not presumed when the alleged error is raised through an ineffective-assistance-of-appellate-counsel claim.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Presiding Justice
JURISDICTION	Georgia
DECIDED	July 2, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Griffin appealed the denial of his state habeas corpus petition after the Supreme Court of Georgia granted his application for a certificate of probable cause to examine whether the habeas court erred in rejecting his ineffective-assistance-of-appellate-counsel claim.
STANDARD OF REVIEW	The habeas court's findings of fact are affirmed unless clearly erroneous, and its legal conclusions must be legally sufficient to establish that counsel was ineffective. Ineffective assistance claims are analyzed under Strickland v. Washington.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Melvin Griffin v. Terry

TOPICS

- state post-conviction relief
- habeas corpus
- ineffective assistance
- right to counsel
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Griffin's substantive claim that he was denied the right to be present during a juror colloquy was procedurally defaulted.
2. Whether appellate counsel was ineffective for failing to raise the right-to-be-present issue on direct appeal.
3. Whether prejudice may be presumed under Strickland when appellate counsel fails to raise a trial error that would have carried presumed prejudice on direct appeal.

HOLDINGS

1. Griffin's substantive claim that he was denied the right to be present during the juror colloquy was procedurally defaulted because he did not object at trial or raise the issue on direct appeal, and he did not assert cause and prejudice sufficient to overcome the default.
2. When appellate ineffectiveness is based on counsel's failure to raise a trial error that would carry presumed prejudice on direct appeal, the petitioner must establish a reasonable probability that the error would have been reversible on appeal by showing a reasonable probability of a different trial outcome had the error been prevented or corrected; prejudice is not presumed in the ineffective-assistance proceeding.

KEY QUOTATIONS

"To reiterate, we hold that, to show prejudice under Strickland where appellate ineffectiveness is alleged due to the failure to assert an error that carries presumed prejudice on direct appeal, the appellant must establish a reasonable probability that the error would have been reversible on appeal, and, to do so, must establish a reasonable probability of a different outcome at trial had the error been prevented or corrected." (291 Ga. at 330)

FACTUAL BACKGROUND

During Griffin's murder trial, a juror informed the trial judge that several relatives had previously been accused of homicide and explained why she had not disclosed that information during voir dire. The judge questioned the juror in the presence of the prosecutor and defense counsel, but outside Griffin's presence, and allowed her to remain on the jury. Griffin returned to the courtroom without objection, and neither his absence nor the juror colloquy was raised on direct appeal.

PROCEDURAL HISTORY

Griffin was convicted of murder and related offenses, and his convictions and sentences were affirmed on direct appeal except for one lesser-included count, which was vacated. He later filed a habeas petition asserting that his absence from a juror colloquy violated his right to be present and that appellate counsel was ineffective for failing to raise that issue. After an evidentiary hearing, the habeas court denied relief, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Griffin v. State, 265 Ga. 552 (458 SE2d 813) (1995)
- Wilson v. State, 212 Ga. 73, 74 (90 SE2d 557) (1955)
- Ward v. State, 288 Ga. 641, 645-647 (4) (706 SE2d 430) (2011)
- Sammons v. State, 279 Ga. 386, 387 (2) (612 SE2d 785) (2005)
- Brooks v. State, 271 Ga. 456 (2) (519 SE2d 907) (1999)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Battles v. Chapman, 269 Ga. 702 (1) (506 SE2d 838) (1998)
- Walker v. Hagins, 290 Ga. 512, 512-513 (722 SE2d 725) (2012)
- Chatman v. Mandil, 280 Ga. 253, 258 (2) (c) (626 SE2d 102) (2006)
- Walker v. Houston, 277 Ga. 470 (1) (588 SE2d 715) (2003)
- Reid v. State, 286 Ga. 484, 488 (3) (c) (690 SE2d 177) (2010)
- Upton v. Jones, 280 Ga. 895, 898 (3) (635 SE2d 112) (2006)
- Bridges v. State, 286 Ga. 535, 539 (3) (690 SE2d 136) (2010)
- Peterson v. State, 284 Ga. 275, 279-280 (663 SE2d 164) (2008)
- Greer v. Thompson, 281 Ga. 419, 422 (637 SE2d 698) (2006)
- Nelson v. Hall, 275 Ga. 792, 794 (573 SE2d 42) (2002)
- Turpin v. Todd, 268 Ga. 820 (2) (493 SE2d 900) (1997)

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