

SUPREME COURT OF FLORIDA

Troy Merck, Jr. v. State of Florida

Merck · No. SC19-1864 · Decided July 9, 2020

SUMMARY

The Supreme Court of Florida affirmed the summary dismissal of Troy Merck, Jr.’s third successive postconviction motion. The court held that the record conclusively refuted Merck’s claim under McCoy v. Louisiana because trial counsel had not conceded his guilt by advancing a voluntary-intoxication defense.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Chief Justice Canady; Justice Polston; Justice Labarga; Justice Lawson; Justice Muñoz; Justice Curiel
JURISDICTION	Florida
DECIDED	July 9, 2020
DOCKET	SC19-1864
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the summary dismissal of Merck's third successive postconviction motion under Florida Rule of Criminal Procedure 3.851.
STANDARD OF REVIEW	Summary dismissal of a postconviction motion is reviewed de novo.
PRECEDENTIAL VALUE	Published Florida Supreme Court per curiam opinion; precedential value subject to the court's rules and any later treatment.
PARTIES	Troy Merck, Jr. v. State of Florida

TOPICS

- state post-conviction relief
- successive petitions
- sixth amendment
- right to counsel
- appellate procedure

PRACTICE AREAS

- criminal postconviction
- capital punishment
- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly summarily dismissed Merck's third successive postconviction motion alleging that trial counsel violated *McCoy v. Louisiana* by conceding guilt over Merck's asserted objective of maintaining actual innocence.
2. Whether the Supreme Court needed to decide whether Merck's successive motion was timely under Florida Rule of Criminal Procedure 3.851(d)(2)(B).

HOLDINGS

1. Summary dismissal was proper because the record conclusively refuted Merck's allegation that trial counsel conceded his guilt when presenting the voluntary-intoxication theory.

KEY QUOTATIONS

“Trial counsel’s concession of the defendant’s guilt is central to McCoy.” (-3-)

“In Merck’s case, as we have previously held, trial counsel “never admitted Merck’s guilt in advancing the intoxication theory.”” (-3-)

“Because the record conclusively establishes that Merck is not entitled to relief, we affirm the circuit court’s order.” (-3-)

FACTUAL BACKGROUND

Merck was convicted of first-degree murder in 1993 and ultimately received a death sentence after three penalty phases. In his third successive postconviction motion, he alleged that appointed trial counsel violated his Sixth Amendment rights by refusing to pursue Merck's asserted objective of actual innocence and instead arguing voluntary intoxication, which Merck characterized as a concession of guilt. The Supreme Court concluded that the trial record conclusively established that counsel never admitted Merck's guilt in advancing the intoxication theory.

PROCEDURAL HISTORY

Merck was convicted of first-degree murder and sentenced to death after three penalty phases. The Florida Supreme Court affirmed his conviction and sentence-related proceedings, affirmed the denial of his initial postconviction motion and habeas petition, and affirmed the denial of his first successive postconviction motion. Merck then filed a third successive motion asserting that trial counsel violated the Sixth Amendment under *McCoy v. Louisiana* by conceding guilt while Merck maintained an actual-innocence defense. The circuit court summarily dismissed the motion as untimely, and the Supreme Court of Florida affirmed on the alternative ground that the record conclusively refuted the alleged concession of guilt.

DISPOSITION

affirmed

CASES CITED

- *Merck v. State* (Merck I), 664 So. 2d 939, 940 (Fla. 1995)

- Merck v. State (Merck II), 763 So. 2d 295, 296 (Fla. 2000)
- Merck v. State (Merck III), 975 So. 2d 1054, 1058-59 (Fla. 2007)
- Merck v. Florida, 555 U.S. 840 (2008)
- Merck v. State (Merck IV), 124 So. 3d 785, 790, 794 (Fla. 2013)
- Merck v. State (Merck V), 260 So. 3d 184, 188 & n.1 (Fla. 2018)
- Hurst v. Florida, 136 S. Ct. 616 (2016)
- Hurst v. State, 202 So. 3d 40 (Fla. 2016)
- State v. Poole, 45 Fla. L. Weekly S41 (Fla. Jan. 23, 2020), clarified, 45 Fla. L. Weekly S121 (Fla. Apr. 2, 2020)
- McCoy v. Louisiana, 138 S. Ct. 1500, 1507, 1509 (2018)
- Dailey v. State, 279 So. 3d 1208, 1215 (Fla. 2019)
- Gardner v. State, 480 So. 2d 91, 92 (Fla. 1985)