

OHIO COURT OF APPEALS, ELEVENTH APPELLATE DISTRICT

State v. Flenner

2022-Ohio-2831 (Ohio Ct. App. 2022) · No. 2022-T-0003 · Decided August 15, 2022

SUMMARY

The Ohio Eleventh District Court of Appeals affirmed the dismissal without a hearing of Cecil Lee Flenner’s postconviction relief petition. The court held that Flenner failed to present sufficient operative facts or supporting evidence establishing ineffective assistance of counsel or substantive grounds for relief, and therefore did not address his res judicata argument.

CASE DETAILS

COURT	Ohio Court of Appeals, Eleventh Appellate District
WRITING FOR THE COURT	Thomas R. Wright, P.J.; Cynthia Westcott Rice, J.; Mary Jane Trapp, J.
JURISDICTION	Ohio
DECIDED	August 15, 2022
DOCKET	2022-T-0003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal without an evidentiary hearing of a petition for postconviction relief alleging ineffective assistance of trial counsel and related constitutional violations.
STANDARD OF REVIEW	Abuse of discretion; a reviewing court will not overrule a postconviction ruling supported by competent and credible evidence absent an abuse of discretion.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Cecil Lee Flenner v. State of Ohio

TOPICS

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

PRACTICE AREAS

- criminal law
- postconviction relief
- ineffective assistance of counsel
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Flenner's postconviction-relief petition without an evidentiary hearing.
2. Whether Flenner presented sufficient operative facts and evidence outside the record to establish substantive grounds for postconviction relief based on ineffective assistance of trial counsel.
3. Whether Flenner was constitutionally entitled to expert assistance in the postconviction proceeding.

HOLDINGS

1. A postconviction petitioner is not entitled to an evidentiary hearing unless the petition and supporting materials present sufficient evidence outside the trial record and operative facts that, if believed, would establish substantive grounds for relief.
2. Flenner did not establish substantive grounds for relief because he failed to provide evidence showing that trial counsel's performance fell below an objective standard of reasonable representation or that the alleged deficiency prejudiced him.
3. A petitioner has no constitutional right to expert assistance in an Ohio postconviction proceeding because the proceeding is civil in nature.

KEY QUOTATIONS

“Where ineffective assistance of counsel is alleged in a petition for postconviction relief, the defendant, in order to secure a hearing on his petition, must proffer evidence which, if believed, would establish not only that his trial counsel had substantially violated at least one of a defense attorney’s essential duties to his client but also that said violation was prejudicial to the defendant.” (¶ 10)

“Accordingly, Flenner has failed to demonstrate sufficient operative facts to establish substantive grounds for relief.” (¶ 13)

FACTUAL BACKGROUND

Flenner was convicted of seven felony offenses, including aggravated burglary, rape, and kidnapping. In his postconviction petition, he alleged that trial counsel was ineffective for failing to present psychiatric or other expert testimony and for failing to request a competency hearing concerning a victim witness whom he claimed had schizoaffective disorder. He supported the petition primarily with an unsourced handwritten description of schizoaffective disorder and his own assertions that the witness exhibited its symptoms.

PROCEDURAL HISTORY

Flenner was convicted in 2017 of seven felony offenses, including aggravated burglary, rape, and kidnapping, and the Court of Appeals affirmed the convictions on direct appeal. He later filed a pro se petition under Ohio's postconviction-relief statute, asserting that trial counsel was ineffective for failing to present expert testimony or request a competency hearing concerning a prosecution witness. The trial court dismissed the petition without a hearing, finding no substantive grounds for relief and also applying res judicata. The Court of Appeals affirmed on the insufficiency of the operative facts and did not reach the res judicata issue.

DISPOSITION

affirmed

CASES CITED

- State v. Flenner, 11th Dist. Trumbull No. 2017-T-0054, 2018-Ohio-1027
- State v. Gondor, 112 Ohio St. 3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶¶ 50, 58
- Ivancic v. Enos, 2012-Ohio-3639, 978 N.E.2d 927, ¶ 70 (11th Dist.)
- State v. Beechler, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62
- State v. Mitchell, 53 Ohio App. 3d 117, 119, 559 N.E.2d 1370 (8th Dist. 1990)
- State v. Bradley, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus
- Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Broom, 146 Ohio St. 3d 60, 2016-Ohio-1028, 51 N.E.3d 620, ¶ 29
- State v. Cole, 2 Ohio St. 3d 112, 114, 443 N.E.2d 169 (1982)
- State v. Jackson, 11th Dist. Trumbull No. 2004-T-0089, 2006-Ohio-2651, ¶ 24