

DISTRICT OF COLUMBIA COURT OF APPEALS

McCrimmon v. United States

853 A.2d 154 (D.C. 2004) · No. 95-CF-802, 98-CO-1259, 99-CO-1654 · Decided July 8, 2004

SUMMARY

The District of Columbia Court of Appeals considered whether defense counsel operated under an actual conflict of interest when a crucial prosecution witness had previously sought counsel's representation. The court held that the record was insufficient to resolve whether counsel believed he was ethically constrained, whether the defendant gave informed consent, and whether the conflict affected the defense strategy. It reversed and remanded for an evidentiary hearing and factual findings.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Ruiz, Associate Judge; Farrell, Associate Judge; Washington, Associate Judge
JURISDICTION	District of Columbia
DECIDED	July 8, 2004
DOCKET	95-CF-802, 98-CO-1259, 99-CO-1654
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	McCrimmon appealed the denial, without an evidentiary hearing, of a second motion under D.C. Code § 23-110 alleging ineffective assistance of trial counsel based on an actual conflict of interest. The trial court denied the motion as a second or successive motion.
PRECEDENTIAL VALUE	Published, precedential opinion of the District of Columbia Court of Appeals
PARTIES	Kevin A. McCrimmon v. United States

TOPICS

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

PRACTICE AREAS

- criminal procedure
- constitutional law
- post-conviction relief
- appellate procedure
- ineffective assistance

QUESTIONS PRESENTED

1. Whether McCrimmon's second D.C. Code § 23-110 motion was procedurally barred as a second or successive motion while the direct appeal remained pending.
2. Whether the existing record established an actual conflict of interest violating McCrimmon's Sixth Amendment right to effective assistance of counsel.
3. Whether the trial court was required to hold an evidentiary hearing to determine counsel's ethical beliefs, McCrimmon's informed consent, and the effect of any conflict on the defense strategy.

HOLDINGS

1. The second motion was not successive because it raised a new ineffective-assistance claim, and it could not properly be procedurally barred while the direct appeal remained pending absent a proper reason for denying consideration.
2. A defendant who did not object at trial must show that an actual conflict of interest adversely affected counsel's performance by obstructing a plausible defense strategy; when an actual conflict is established, the defendant need not separately demonstrate prejudice.
3. The existing record did not establish whether Grimm actually believed he was ethically constrained from cross-examining Murphy, whether McCrimmon understood the conflict when consenting to continued representation, or whether the conflict affected the defense strategy; an evidentiary hearing was therefore required.

KEY QUOTATIONS

“a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance.” (156)

“We reverse and remand to the trial court for an evidentiary hearing and findings of fact on the question of Grimm's actual belief on whether he was ethically constrained in cross-examining Murphy; its impact, if any, on McCrimmon's consent to his continued representation, and whether it affected the defensive strategy followed in cross-examining Murphy.” (165)

FACTUAL BACKGROUND

Defense counsel Bernard Grimm had a preliminary attorney-client relationship with Antonio Murphy, a government witness whom the prosecution characterized as crucial. Murphy expected Grimm to represent him in unrelated criminal matters, with payment allegedly to come from a person associated with McCrimmon, but the expected payment and representation did not materialize, causing Murphy to become angry. Although the trial court told Grimm he could cross-examine Murphy about this possible bias, Grimm did not substantially pursue that line of questioning. McCrimmon's conviction rested in part on Murphy's testimony that McCrimmon supplied weapons used in the shooting.

PROCEDURAL HISTORY

McCrimmon's appointed appellate counsel initially filed a § 23-110 motion asserting ineffective assistance on grounds unrelated to the alleged conflict and witness recantation; that motion was denied without a hearing. New appellate counsel later filed a second § 23-110 motion based on trial counsel's alleged conflict arising from counsel's preliminary attorney-client relationship with government witness Antonio Murphy. The trial court denied the second motion as procedurally barred without holding a hearing. The District of Columbia Court of Appeals held that the motion was not successive because it raised a different claim and was not barred while the direct appeal remained pending, then reversed for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct an evidentiary hearing and make findings concerning Grimm's actual belief about whether ethical obligations constrained his cross-examination of Murphy, the effect of that belief on McCrimmon's consent to continued representation, and whether any conflict affected the defense strategy used in cross-examining Murphy.

CASES CITED

- Cuyler v. Sullivan, 446 U.S. 335 (1980)
- Derrington v. United States, 681 A.2d 1125 (D.C. 1996)
- Fitzgerald v. United States, 530 A.2d 1129 (D.C. 1987)
- McCleskey v. Zant, 499 U.S. 467 (1991)
- Junior v. United States, 634 A.2d 411 (D.C. 1993)
- Head v. United States, 489 A.2d 450 (D.C. 1985)
- Murray v. Carrier, 477 U.S. 478 (1986)
- Coleman v. Thompson, 501 U.S. 722 (1991)
- Shepard v. United States, 533 A.2d 1278 (D.C. 1987)
- Evitts v. Lucey, 469 U.S. 387 (1985)
- Williams v. United States, 783 A.2d 598 (D.C. 2001) (en banc)
- Thomas v. United States, 772 A.2d 818 (D.C. 2001)
- Massaro v. United States, 538 U.S. 500 (2003)
- Washington v. United States, 834 A.2d 899 (D.C. 2003)
- Mickens v. Virginia, 535 U.S. 162 (2002)
- Chase v. United States, 656 A.2d 1151 (D.C. 1995)
- Bundy v. United States, 422 A.2d 765 (D.C. 1980)
- Herbin v. Hoeffel, 806 A.2d 186 (D.C. 2002)
- In re Gonzalez, 773 A.2d 1026 (D.C. 2001)
- Witherspoon v. United States, 557 A.2d 587 (D.C. 1989)

- Douglas v. United States, 488 A.2d 121 (D.C. 1985)
- Pinkney v. United States, 851 A.2d 479 (D.C. 2004)
- United States v. Ross, 33 F.3d 1507 (11th Cir. 1994)
- Doe v. United States, 583 A.2d 670 (D.C. 1990)
- Watson v. United States, 536 A.2d 1056 (D.C. 1987) (en banc)
- Matos v. United States, 631 A.2d 28 (D.C. 1993)
- Wright v. United States, 588 A.2d 260 (D.C. 1991)
- Brown v. United States, 627 A.2d 499 (D.C. 1993)
- Bright v. United States, 698 A.2d 450 (D.C. 1997)
- Hall v. United States, 454 A.2d 314 (D.C. 1982)
- Curry v. United States, 520 A.2d 255 (D.C. 1987)
- Hanna v. United States, 666 A.2d 845 (D.C. 1995)
- Boone v. United States, 769 A.2d 811 (D.C. 2001)
- United States v. Singleton, 165 F.3d 1297 (10th Cir. 1999)

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