

SUPREME COURT OF OREGON

Lichau v. Baldwin, 333 Or. 350

39 P.3d 851 (2002) · No. SC S47776 · Decided February 14, 2002

SUMMARY

The Oregon Supreme Court held that defense counsel provided constitutionally inadequate assistance by withdrawing the defendant's alibi defense without conducting a reasonable investigation of military records and potential alibi witnesses. The court concluded that the omitted alibi evidence had a tendency to affect the trial's outcome and reversed the Court of Appeals, affirming the post-conviction court's grant of relief.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	February 14, 2002
DOCKET	SC S47776
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The superintendent sought review of a Court of Appeals decision reversing a post-conviction court judgment that granted Lichau a new trial based on constitutionally inadequate assistance of trial counsel.
STANDARD OF REVIEW	The Supreme Court was bound by the post-conviction court's historical factual findings when supported by evidence in the record and presumed unresolved facts were decided consistently with the ultimate conclusion. The court independently reviewed whether counsel exercised reasonable professional skill and judgment and whether the deficient performance had a tendency to affect the trial's result.
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc opinion; precedential.
PARTIES	G.H. Baldwin, Superintendent, Eastern Oregon Correctional Institution v. Daniel David Lichau

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

right to counsel

criminal procedure

PRACTICE AREAS

criminal procedure

state post-conviction relief

constitutional law

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether trial counsel exercised reasonable professional skill and judgment by limiting the investigation of Lichau's military-record and witness-based alibi defense.
2. Whether counsel's withdrawal of the alibi defense, based on the prosecutor's unproduced basket-leave evidence, constituted inadequate assistance of counsel.
3. Whether the absence of the alibi evidence had a tendency to affect the result of the criminal prosecution.
4. Whether Lichau was entitled to post-conviction relief and a new trial under Article I, section 11, of the Oregon Constitution.

HOLDINGS

1. A tactical decision by trial counsel is entitled to deference only when it is grounded in a reasonable investigation; counsel's decision to limit investigation of an alibi defense was not reasonable where counsel knew that military records and potential witnesses could establish the defendant's whereabouts but failed to pursue them.
2. Counsel's withdrawal of Lichau's alibi defense was not a reasonable exercise of professional skill and judgment because counsel lacked the information necessary to evaluate the prosecutor's alleged basket-leave evidence as a result of counsel's unreasonably limited investigation.
3. Evidence need not conclusively establish the defendant's alibi to satisfy Oregon's prejudice standard; evidence has a tendency to affect the result when it could materially influence the jury's assessment of whether the defendant was present at the alleged crime and the credibility of competing accounts.

KEY QUOTATIONS

“However, this court repeatedly has cautioned that, to be considered an exercise of professional skill and judgment, a lawyer's tactical decision “must be grounded on a reasonable investigation.”” (at 857)

“We therefore conclude that the record supports the post-conviction court's finding that McCrea's decision to withdraw petitioner's alibi defense was not a reasonable exercise of professional skill and judgment.” (at 858)

“This court never has held that evidence presented at a post-conviction hearing—evidence that could have been presented at petitioner's criminal trial—must be “conclusive” to be deemed to have a tendency to affect the result of a trial.” (at 859-860)

FACTUAL BACKGROUND

Lichau was prosecuted for alleged sexual abuse of his niece in Oregon between June 1 and June 19, 1989. At the time, he was a Marine stationed at Camp Lejeune in North Carolina, and he told trial counsel that military records and witnesses could support an alibi. Counsel prepared an alibi defense but withdrew it on the first day of trial after the prosecutor threatened to present evidence of undocumented military "basket leave," although the prosecutor never produced that evidence. Counsel had not adequately investigated Lichau's military records or potential alibi witnesses, and the post-conviction court found that additional evidence could have supported the alibi and affected the jury's assessment of whether Lichau was present in Oregon.

PROCEDURAL HISTORY

Lichau was convicted of rape, sodomy, and sexual abuse, and the convictions were affirmed on direct appeal. In post-conviction proceedings, the court found that trial counsel unreasonably investigated and withdrew Lichau's alibi defense and granted relief. The Court of Appeals reversed, but the Oregon Supreme Court reversed the Court of Appeals and affirmed the post-conviction court's judgment granting a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court reversed the Court of Appeals and affirmed the circuit court's judgment granting post-conviction relief and a new trial. The opinion does not state additional remand instructions.

CASES CITED

- State v. Kennedy, 295 Or. 260, 262, 666 P.2d 1316 (1983)
- Stevens v. State of Oregon, 322 Or. 101, 108-110, 902 P.2d 1137 (1995)
- Trujillo v. Maass, 312 Or. 431, 435, 822 P.2d 703 (1991)
- Gorham v. Thompson, 332 Or. 560, 564, 567, 34 P.3d 161 (2001)
- Ball v. Gladden, 250 Or. 485, 487, 443 P.2d 621 (1968)
- Krummacher v. Gierloff, 290 Or. 867, 875, 883, 627 P.2d 458 (1981)
- Lichau v. Baldwin, 166 Or. App. 411, 418-422, 999 P.2d 1207 (2000)
- State v. Lichau, 133 Or. App. 602, 891 P.2d 25, rev. den. 321 Or. 340, 898 P.2d 192 (1995)