

SUPREME COURT OF FLORIDA

Mungin v. State

932 So. 2d 986 (Fla. 2006) · No. Nos. SC03-780, SC03-1774 · Decided April 6, 2006

SUMMARY

The Supreme Court of Florida affirmed the denial of Anthony Mungin's motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 and denied his petition for a writ of habeas corpus. The court rejected claims involving judicial recusal, public-records access, evidentiary materials, ineffective assistance of counsel, alibi investigation, and penalty-phase representation. The court held that some claims were procedurally barred or waived and that the remaining claims did not establish deficient performance and prejudice under Strickland v. Washington.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Pariente, C.J.; Wells, J.; Lewis, J.; Cantero, J.; Bell, J.; Anstead, J.; Quince, J.
JURISDICTION	Florida
DECIDED	April 6, 2006
DOCKET	Nos. SC03-780, SC03-1774
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mungin appealed the circuit court's denial of his motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 and simultaneously petitioned the Supreme Court of Florida for a writ of habeas corpus.
STANDARD OF REVIEW	After an evidentiary hearing on ineffective-assistance claims, the Court deferred to factual findings supported by competent, substantial evidence and reviewed the application of law to those facts de novo. For summary denials of postconviction claims, the court considered whether the motion, files, and records conclusively refuted the claims or whether the allegations were legally insufficient.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Anthony Mungin v. State of Florida

TOPICS

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QUESTIONS PRESENTED

1. Whether the postconviction judge and all judges of the Fourth Judicial Circuit were required to recuse themselves because Mungin's former trial counsel, a sitting county judge, testified in the postconviction proceedings.
2. Whether the circuit court erred by failing to conduct an in-camera review of records claimed to be exempt from disclosure.
3. Whether the circuit court improperly refused to review a detective's rough interview notes.
4. Whether the circuit court properly summarily denied ineffective-assistance claims concerning jury selection, closing argument, and penalty-phase witness preparation.
5. Whether trial counsel was ineffective during the guilt phase for failing to impeach a witness adequately, call a detective, or pursue an alibi defense.
6. Whether the Fourth Judicial Circuit Public Defender's Office had an actual conflict of interest based on its representation of prosecution witness Ronald Kirkland.
7. Whether trial counsel was ineffective during the penalty phase for failing to present evidence of Mungin's childhood suicide attempt.
8. Whether appellate counsel was ineffective for failing to raise alleged hearsay and photograph errors during the penalty phase.
9. Whether the Supreme Court of Florida should reconsider its direct-appeal ruling that the erroneous premeditated-murder instruction was harmless.
10. Whether Mungin was entitled to relief under *Ring v. Arizona*.

HOLDINGS

1. Mungin's recusal claim was procedurally barred and meritless because he knew the alleged grounds for disqualification but did not timely move for disqualification, and no rule required circuitwide sua sponte recusal merely because a fellow judge in the circuit served as a witness.
2. Mungin waived or abandoned his claim that the circuit court failed to conduct an in-camera inspection because he had ample opportunity to pursue the records issue but did not seek review or compel production before the evidentiary hearing.
3. A postconviction claim may be summarily denied when the motion, files, and records conclusively show that the movant is entitled to no relief; if a legally sufficient claim is not refuted by the record, an evidentiary hearing is required.
4. The circuit court erred by treating Mungin's claim that counsel was ineffective for opening the door to damaging testimony as procedurally barred, but the error was harmless because Mungin failed to

establish prejudice under Strickland.

5. Mungin failed to establish ineffective assistance based on counsel's impeachment of Kirkland, failure to call Detective Conn, or failure to pursue an alibi defense because he did not establish prejudice and counsel's alibi decision was supported by trial strategy and the record.
6. Mungin was not entitled to relief based on an alleged conflict because he failed to show that counsel actively represented conflicting interests and that the alleged conflict adversely affected counsel's performance.
7. Counsel was not ineffective for failing to present direct evidence that Mungin attempted suicide at age twelve because counsel investigated the information through a mental-health expert, made an informed strategic decision, and Mungin failed to establish prejudice.
8. Appellate counsel was not ineffective for failing to raise alleged hearsay and photograph errors because the claims were unpreserved or meritless, and the photograph issue was harmless in any event.
9. The court declined to reconsider its direct-appeal ruling that the erroneous instruction on premeditated murder was harmless because a general verdict need not be reversed where an alternative theory of guilt was supported by sufficient evidence.
10. Mungin was not entitled to relief under Ring because Ring does not apply retroactively.

KEY QUOTATIONS

"To obtain relief on a claim of ineffective assistance of counsel Mungin must establish deficient performance and prejudice, as set forth in Strickland v. Washington, 466 U.S. 668 (1984)." (at 996)

"A possible, speculative or merely hypothetical conflict is "insufficient to impugn a criminal conviction."" (at 1001-02)

"With respect to mitigation this Court has recognized that "the obligation to investigate and prepare for the penalty portion of a capital case cannot be overstated."" (at 1002)

FACTUAL BACKGROUND

Mungin was convicted of murdering convenience-store clerk Betty Jean Woods, who was shot in the head in Jacksonville in September 1990. A customer identified Mungin as the man leaving the store, and ballistics evidence linked the murder weapon to shootings in two other locations and to a pistol found in Mungin's room after his arrest. The jury returned a general first-degree-murder verdict based on theories of premeditated murder and felony murder, and recommended death by a seven-to-five vote. The trial court imposed a death sentence after finding aggravating circumstances and little mitigating evidence.

PROCEDURAL HISTORY

Mungin was convicted of first-degree murder and sentenced to death. The Supreme Court of Florida affirmed the conviction and sentence on direct appeal, while holding that the evidence was insufficient for premeditated murder but sufficient for felony murder and that the instructional error was harmless. After an evidentiary hearing on selected postconviction claims, the circuit court denied relief; it also summarily denied other claims. The Supreme Court of Florida affirmed that order and denied Mungin's habeas petition.

DISPOSITION

affirmed

CASES CITED

- Mungin v. State, 689 So. 2d 1026, 1028-32 (Fla. 1995)
- Schwab v. State, 814 So. 2d 402, 407-08 (Fla. 2002)
- Maharaj v. State, 684 So. 2d 726 (Fla. 1996)
- Vining v. State, 827 So. 2d 201, 218-19 (Fla. 2002)
- Pace v. State, 854 So. 2d 167, 180 (Fla. 2003)
- Anderson v. State, 627 So. 2d 1170, 1171 (Fla. 1993)
- Rose v. State, 774 So. 2d 629, 632 (Fla. 2000)
- Guzman v. State, 868 So. 2d 498 (Fla. 2003)
- Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000)
- Strickland v. Washington, 466 U.S. 668, 688-89, 694 (1984)
- Rutherford v. State, 727 So. 2d 216, 218, 220, 223 (Fla. 1998)
- Waterhouse v. State, 792 So. 2d 1176, 1182 (Fla. 2001)
- Valle v. State, 705 So. 2d 1331, 1335 (Fla. 1997)
- Brown v. State, 846 So. 2d 1114, 1123-24 (Fla. 2003)
- Johnson v. State, 769 So. 2d 990, 1000-01 (Fla. 2000)
- Reed v. State, 875 So. 2d 415, 429-30 (Fla. 2004)
- Torres-Arboleda v. Dugger, 636 So. 2d 1321, 1325 (Fla. 1994)
- Bouie v. State, 559 So. 2d 1113, 1115 (Fla. 1990)
- Hunter v. State, 817 So. 2d 786, 791-93 (Fla. 2002)
- Herring v. State, 730 So. 2d 1264, 1267 (Fla. 1998)
- McCrae v. State, 510 So. 2d 874, 877 (Fla. 1987)
- State v. Lewis, 838 So. 2d 1102, 1113 (Fla. 2002)
- Ragsdale v. State, 798 So. 2d 713, 716 (Fla. 2001)
- State v. Riechmann, 777 So. 2d 342, 350 (Fla. 2000)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Asay v. State, 769 So. 2d 974, 985 (Fla. 2000)
- Wilson v. Wainwright, 474 So. 2d 1162, 1163 (Fla. 1985)
- Teffeteller v. Dugger, 734 So. 2d 1009, 1018, 1027 (Fla. 1999)
- Suarez v. Dugger, 527 So. 2d 190, 192-93 (Fla. 1988)
- Rutherford v. Moore, 774 So. 2d 637, 643 (Fla. 2000)
- Williamson v. Dugger, 651 So. 2d 84, 86 (Fla. 1994)
- Chandler v. Crosby, 916 So. 2d 728 (Fla. 2005)

- Johnson v. Singletary, 695 So. 2d 263, 266 (Fla. 1996)
- Dufour v. State, 905 So. 2d 42, 62-63, 73-74 (Fla. 2005)
- Lockhart v. State, 655 So. 2d 69, 72-73 (Fla. 1995)
- Duncan v. State, 619 So. 2d 279, 282 (Fla. 1993)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Johnson v. State, 904 So. 2d 400, 412 (Fla. 2005)

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