

SUPREME COURT OF CONNECTICUT

Kaddah v. Commissioner of Correction, 299 Conn. 129

7 A.3d 911 (2010) · No. No. 18565 · Decided November 30, 2010

SUMMARY

The Supreme Court of Connecticut considered an appeal from the summary dismissal of a successive state habeas petition. The petitioner sought reinstatement of a previously withdrawn appeal to exhaust state remedies, but the court held that the petition failed to allege a constitutional impairment of the right to appeal and therefore could not support the requested relief. The court dismissed the appeal without reaching the petitioner's due process challenges to summary dismissal under Practice Book § 23-29.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Vertefeuille, J.; Rogers, C.J.; Norcott, J.; Katz, J.; Palmer, J.; McLachlan, J.; Eveleigh, J.
JURISDICTION	Connecticut
DECIDED	November 30, 2010
DOCKET	No. 18565
DISPOSITION	dismissed
PROCEDURAL POSTURE	The petitioner appealed from the denial of certification to appeal from a habeas court judgment summarily dismissing his successive state habeas petition. The Supreme Court of Connecticut dismissed the appeal on the alternate ground that the petition failed to state a legally sufficient claim for reinstatement of a withdrawn appeal.
STANDARD OF REVIEW	Under General Statutes § 52-470(b), the petitioner first had to establish that the denial of certification to appeal was an abuse of discretion by showing that the issues were debatable among jurists of reason, that a court could resolve them differently, or that the questions deserved encouragement to proceed further. The Supreme Court nevertheless reached an alternate ground and reviewed the legal sufficiency of the habeas allegations.
PRECEDENTIAL VALUE	published and precedential Connecticut Supreme Court opinion
PARTIES	Nabil Kaddah v. Commissioner of Correction

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Supreme Court needed to decide whether the habeas court abused its discretion in denying certification to appeal from the summary dismissal.
2. Whether the petition sufficiently alleged a constitutional impairment of the petitioner's right to appeal so as to authorize reinstatement of his withdrawn appeal.
3. Whether the habeas court properly dismissed a petition that failed to state a valid claim for habeas relief.

HOLDINGS

1. To obtain reinstatement of an appeal through habeas relief, a petitioner must allege and prove a constitutional impairment of the statutory right to appeal. Allegations of ineffective assistance by trial and direct-appeal counsel, without an allegation that the withdrawal of the later appeal resulted from a constitutional impairment, do not establish a claim for reinstatement.
2. A habeas petition that fails to allege facts establishing entitlement to the requested relief may be dismissed, including under Practice Book § 23-29(2).

KEY QUOTATIONS

“To obtain reinstatement of an appeal through a habeas petition, a petitioner must allege and prove a constitutional impairment of the petitioner's statutory right to appeal.” (917)

“In the absence of any allegation of a constitutional impairment of the petitioner's right to appeal from the denial of his first petition, the present petition fails to state a claim for habeas relief.” (918)

FACTUAL BACKGROUND

Kaddah withdrew his appeal from the denial of his first state habeas petition before the Appellate Court could hear it. After a federal habeas petition was dismissed for failure to exhaust state remedies because the state appeal had been withdrawn, Kaddah filed the present state habeas petition seeking reinstatement of that withdrawn appeal. The petition repeated ineffective-assistance allegations concerning his criminal trial counsel and direct-appeal counsel but did not allege that the attorney handling the withdrawn appeal constitutionally impaired his right to appeal or that the withdrawal was involuntary or otherwise unconstitutional.

PROCEDURAL HISTORY

Kaddah was convicted of murder, attempted murder, and first-degree unlawful restraint, and the conviction was affirmed on direct appeal. His first state habeas petition alleging ineffective assistance of trial and direct-appeal counsel was dismissed, and he withdrew his appeal from the denial of certification. After a federal habeas

petition was dismissed for failure to exhaust state remedies, he filed the present state habeas petition seeking reinstatement of the withdrawn appeal. The habeas court summarily dismissed the petition as successive under Practice Book § 23-29(3) and denied certification to appeal; the Supreme Court transferred the appeal from the Appellate Court and dismissed it on an alternate ground.

DISPOSITION

dismissed

CASES CITED

- State v. Kaddah, 250 Conn. 563, 736 A.2d 902 (1999)
- Kaddah v. Lee, United States District Court, Docket No. 3:08CV519 (SRU), 2008 WL 4534264 (D. Conn. Oct. 7, 2008)
- Kaddah v. Strange, United States District Court, Docket No. 3:00CV1642 (CFD), 2001 WL 91602 (D. Conn. Jan. 18, 2001)
- Kaddah v. Commissioner of Correction, 105 Conn. App. 430, 939 A.2d 1185, cert. denied, 286 Conn. 903, 943 A.2d 1101 (2008)
- Simms v. Warden, 229 Conn. 178, 187, 640 A.2d 601 (1994)
- Simms v. Warden, 230 Conn. 608, 615-16, 646 A.2d 126 (1994)
- Lozada v. Deeds, 498 U.S. 430, 431-32, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991)
- Macri v. Hayes, 189 Conn. 566, 568, 456 A.2d 1186 (1983)
- Lebron v. Commissioner of Correction, 274 Conn. 507, 519-21, 876 A.2d 1178 (2005)
- James L. v. Commissioner of Correction, 245 Conn. 132, 148, 712 A.2d 947 (1998)
- Gaines v. Manson, 194 Conn. 510, 517-18, 481 A.2d 1084 (1984)
- Fredericks v. Reincke, 152 Conn. 501, 508, 208 A.2d 756 (1965)
- State v. Phidd, 42 Conn. App. 17, 27-29, 681 A.2d 310, cert. denied, 238 Conn. 907, 679 A.2d 2 (1996), cert. denied, 520 U.S. 1108, 117 S. Ct. 1115, 137 L. Ed. 2d 315 (1997)
- Smith v. Robinson, 8 Conn. App. 459, 466, 513 A.2d 187 (1986)
- State v. Brown, 157 Conn. 398, 401-403, 254 A.2d 570 (1969)
- Galland v. Bronson, 16 Conn. App. 54, 57, 546 A.2d 935, cert. denied, 209 Conn. 820, 551 A.2d 755 (1988)
- Oliphant v. Commissioner of Correction, 274 Conn. 563, 569-71, 877 A.2d 761 (2005)
- Lewis v. Commissioner of Correction, 116 Conn. App. 400, 409-12, 975 A.2d 740, cert. denied, 294 Conn. 908, 982 A.2d 1082 (2009)
- Grant v. Commissioner of Correction, 121 Conn. App. 295, 299-302, 995 A.2d 641 (2010)
- Johnson v. Commissioner of Correction, 258 Conn. 804, 815, 786 A.2d 1091 (2002)
- In re Matthew F., 297 Conn. 673, 685 n. 11, 4 A.3d 248 (2010)
- Jarrett v. Commissioner of Correction, 108 Conn. App. 59, 61 n. 1, 947 A.2d 395, cert. denied, 288 Conn. 910, 953 A.2d 653 (2008)

