

OREGON COURT OF APPEALS

Kleng v. Reyes

350 Or. App. 504 (2026) · No. A184031 · Decided June 10, 2026

SUMMARY

The Oregon Court of Appeals affirmed the denial of Brett George Kleng’s petition for post-conviction relief. The court rejected claims concerning ineffective assistance of counsel, including failure to move for judgment of acquittal or suppress evidence, vouching, closing argument, jury unanimity and polling, an involuntary Alford plea, and cumulative error. The court held that the challenged decisions were either supported by the record and reasonable trial strategy or did not establish prejudice.

CASE DETAILS

|                       |                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Oregon Court of Appeals                                                                                                                                                                  |
| WRITING FOR THE COURT | Hellman, J.; Ortega, Presiding Judge; Joyce, Judge; Hellman, Judge                                                                                                                       |
| JURISDICTION          | Oregon Court of Appeals                                                                                                                                                                  |
| DECIDED               | June 10, 2026                                                                                                                                                                            |
| DOCKET                | A184031                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Petitioner appealed an Umatilla County Circuit Court judgment denying his petition for post-conviction relief based on claims of inadequate and ineffective assistance of trial counsel. |
| STANDARD OF REVIEW    | The court reviewed the post-conviction court's decision for legal error. Findings of historical fact were binding if supported by evidence in the record.                                |
| PRECEDENTIAL VALUE    | Published Oregon Court of Appeals opinion                                                                                                                                                |
| PARTIES               | Brett George Kleng v. Erin Reyes, Superintendent, Two Rivers Correctional Institution                                                                                                    |

TOPICS

- state post-conviction relief
- ineffective assistance
- criminal procedure
- evidence
- appellate procedure

PRACTICE AREAS

- post-conviction relief
- criminal procedure
- constitutional law
- evidence
- appellate procedure

## QUESTIONS PRESENTED

1. Whether trial counsel provided constitutionally inadequate and ineffective assistance by failing to move for a judgment of acquittal on the forcible-compulsion element of first-degree unlawful sexual penetration and first-degree sexual abuse.
2. Whether trial counsel was ineffective for failing to move to suppress Kleng's police interview.
3. Whether trial counsel was ineffective for failing to object to alleged vouching testimony concerning the victim's truthfulness and statements by police officers.
4. Whether trial counsel was ineffective for failing to object to the prosecutor's closing argument.
5. Whether trial counsel was ineffective for failing to request a unanimity instruction and jury poll.
6. Whether trial counsel was ineffective for failing to ensure that Kleng's Alford plea was knowing, voluntary, and intelligent.
7. Whether cumulative trial errors independently warranted post-conviction relief.
8. Whether the post-conviction court erred in denying relief on any of Kleng's eight assignments of error.

## HOLDINGS

1. A petitioner claiming ineffective assistance based on counsel's failure to file a particular motion must show that counsel unreasonably assessed the motion's strategic value or failed to understand or recognize supporting existing law, and must establish that the motion would have succeeded and affected the outcome. Kleng failed to show a reasonable likelihood that a judgment-of-acquittal motion would have been granted because the trial evidence permitted a factfinder to find forcible compulsion.
2. Counsel's informed strategic decision not to seek suppression of the entire police interview did not constitute inadequate or ineffective assistance.
3. Counsel was not ineffective for allowing statements concerning the victim's truthfulness and police officers' statements to remain in evidence when the decisions reflected an objectively reasonable trial strategy.
4. The prosecutor did not improperly comment on Kleng's decision not to testify, and the challenged other-acts argument was permissible because it was offered for a non-propensity purpose rather than to establish character.
5. The post-conviction court correctly denied relief on Kleng's claim that counsel was ineffective for failing to request a unanimity instruction and jury poll.
6. The post-conviction court correctly denied relief on the claim that counsel failed to ensure that Kleng's Alford plea was knowing, voluntary, and intelligent.
7. Cumulative error is not an independent ground for post-conviction relief.

## KEY QUOTATIONS

*“A petitioner claiming inadequate assistance of counsel under Article I, section 11, has the burden “to show, by a preponderance of the evidence, facts demonstrating that trial counsel failed to exercise reasonable professional skill and judgment and that petitioner suffered prejudice as a result.”” (506)*

*“To establish prejudice from a trial attorney’s failure to make a motion, a petitioner must first establish that a would-be motion would have succeeded, and then demonstrate that that successful motion would have had a tendency to affect the ultimate outcome of the case.” (507-508)*

*“Cumulative error is not an independent ground for relief in a post-conviction case.” (511)*

## FACTUAL BACKGROUND

Kleng was charged in 2018 with 18 sex-crime counts involving three minor victims. The principal claims concerned convictions for first-degree unlawful sexual penetration and first-degree sexual abuse arising from evidence that Kleng touched and penetrated his 14-year-old stepdaughter's vagina while massaging her injured leg; she said no twice and pushed his hands away. A separate claim concerned Kleng's Alford plea to a count involving another victim.

## PROCEDURAL HISTORY

Kleng was convicted after a trial on multiple sex-crime counts and entered an Alford plea to a separate count involving another victim. After an unsuccessful direct appeal, he sought post-conviction relief, asserting numerous claims concerning trial counsel's performance, the admission of evidence, closing argument, jury procedures, the voluntariness of his plea, and cumulative error. The post-conviction court denied relief on all claims, and the Oregon Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Green v. Franke, 357 Or. 301, 312, 350 P.3d 188 (2015)
- North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)
- State v. B. J. P., 339 Or. App. 134, 138, 566 P.3d 1187 (2025)
- Trujillo v. Maass, 312 Or. 431, 435, 822 P.2d 703 (1991)
- Strickland v. Washington, 466 U.S. 668, 687-88, 690, 692, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Montez v. Czerniak, 355 Or. 1, 6-7, 322 P.3d 487, adh'd to as modified on recons., 355 Or. 598, 330 P.3d 595 (2014)
- Barnett v. Brown, 319 Or. App. 257, 258-59, 509 P.3d 748, rev. den., 370 Or. 197 (2022)
- Delgado-Juarez v. Cain, 307 Or. App. 83, 93, 475 P.3d 883 (2020)
- Sutherland v. Fhuere, 332 Or. App. 589, 591-92, 549 P.3d 614, rev. den., 372 Or. 720 (2024)
- State v. Marshall, 350 Or. 208, 227, 253 P.3d 1017 (2011)
- State v. Nygaard, 303 Or. App. 793, 798, 466 P.3d 692, rev. den., 367 Or. 115 (2020)
- State v. Travis, 344 Or. App. 496, 580 P.3d 889 (2025), rev. allowed, 375 Or. 109 (2026)
- Smith v. Kelly, 318 Or. App. 567, 569-70, 508 P.3d 77, rev. den., 370 Or. 822 (2023)
- Mandell v. Miller, 326 Or. App. 807, 808-09, 533 P.3d 815, rev. den., 371 Or. 476 (2023)

- Perkins v. Fhuere, 332 Or. App. 290, 301, 549 P.3d 25 (2024)
- Vega-Arrieta v. Blewett, 331 Or. App. 416, 428, 545 P.3d 746, rev. den., 372 Or. 763 (2024)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/oregon-court-of-appeals-oregon-court-of-appeals/2026/kleng-v-reyes-8cp9awen>