

SUPREME COURT OF NEBRASKA

State v. Taylor

300 Neb. 629 (2018) · No. No. S-17-1034 · Decided July 27, 2018

SUMMARY

The Nebraska Supreme Court affirmed the denial of Trevelle J. Taylor’s motion for postconviction relief without an evidentiary hearing or appointment of counsel. Taylor alleged ineffective assistance based on counsel’s handling of suppression issues, hearsay testimony concerning the location of a firearm, and prosecutorial comments during closing argument. The court concluded that Taylor failed to show deficient performance resulting in prejudice and that the district court did not abuse its discretion in declining to appoint counsel.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Johnson, District Judge
JURISDICTION	Nebraska
DECIDED	July 27, 2018
DOCKET	No. S-17-1034
DISPOSITION	affirmed
PROCEDURAL POSTURE	Taylor appealed from the Douglas County District Court's denial of his motion for postconviction relief without an evidentiary hearing and without appointing postconviction counsel.
STANDARD OF REVIEW	The sufficiency of factual allegations and whether the record and files affirmatively show that the defendant is entitled to no relief are reviewed de novo. The denial of court-appointed counsel in a postconviction proceeding is reviewed for abuse of discretion. Fourth Amendment suppression rulings receive a two-part review: historical facts are reviewed for clear error, while the ultimate constitutional question is reviewed independently as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Trevelle J. Taylor v. State of Nebraska

TOPICS

state post-conviction relief

ineffective assistance

fourth amendment

suppression of evidence

prosecutorial misconduct

PRACTICE AREAS

state post-conviction relief

criminal procedure

constitutional law

ineffective assistance of counsel

appellate procedure

QUESTIONS PRESENTED

1. Whether Taylor's ineffective-assistance claim based on counsel's failure to challenge evidence obtained during his detention and arrest required postconviction relief or an evidentiary hearing.
2. Whether counsel was ineffective for failing to object earlier to hearsay concerning the general location where a gun was found.
3. Whether counsel was ineffective for failing to object to alleged prosecutorial misconduct during closing argument.
4. Whether the cumulative effect of the alleged instances of deficient performance warranted postconviction relief.
5. Whether the district court abused its discretion by denying appointment of postconviction counsel.

HOLDINGS

1. A postconviction court need not grant an evidentiary hearing when the motion alleges only conclusions of fact or law, or when the records and files affirmatively show that the defendant is entitled to no relief. Taylor's motion did not establish a constitutional violation warranting a hearing.
2. To prevail on an ineffective-assistance claim under Strickland, a defendant must show deficient performance and actual prejudice, meaning a reasonable probability that the proceeding would have had a different result absent counsel's deficient performance.
3. Counsel was not ineffective for failing to object at trial to evidence obtained during Taylor's detention and arrest because the detention and arrest did not violate the Fourth Amendment and any objection would have been overruled.
4. Taylor failed to establish ineffective assistance based on counsel's failure to object to testimony about the general location where the gun was found because exclusion of that testimony would not create a reasonable probability of a different verdict.
5. The prosecutor's challenged comments did not constitute prosecutorial misconduct because they did not mislead or unduly influence the jury and were reasonable inferences from the evidence. Counsel therefore was not ineffective for failing to object or seek a mistrial.
6. The cumulative effect of Taylor's alleged instances of deficient performance did not warrant postconviction relief because none of the individual claims had merit.
7. The district court did not abuse its discretion by denying appointment of postconviction counsel because Taylor's claims were without merit and the proceeding presented no justiciable issue of law or fact.

KEY QUOTATIONS

“To prevail on a claim of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel’s performance was deficient and that this deficient performance actually prejudiced the defendant’s defense.” (at 634)

“A prosecutor’s conduct that does not mislead and unduly influence the jury does not constitute misconduct.” (at 643)

“The prosecutor is entitled to draw inferences from the evidence in presenting his or her case, and such inferences generally do not amount to prosecutorial misconduct.” (at 644)

FACTUAL BACKGROUND

Taylor was convicted after retrial of fatally shooting Justin Gaines and using a deadly weapon to commit a felony. Police detained and arrested Taylor after a shooting witness described a shooter wearing brown, officers located a vehicle matching a broadcast description, and Taylor ran from officers before discarding a brown shirt later identified by a witness. Evidence concerning the detention, arrest, a gun found near a witness's home, and the prosecutor's closing arguments formed the basis of Taylor's ineffective-assistance claims.

PROCEDURAL HISTORY

Taylor was convicted of first degree murder and use of a deadly weapon to commit a felony. His initial convictions were reversed because of an erroneous jury instruction; after retrial, the convictions were affirmed, although his life sentence for murder was vacated and remanded for resentencing because he was under 18 when he committed the offense. After resentencing, Taylor filed a pro se postconviction motion alleging ineffective assistance of counsel based on suppression issues, hearsay, prosecutorial misconduct, and cumulative error. The district court overruled the motion without an evidentiary hearing and denied appointment of counsel. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Taylor, 282 Neb. 297, 803 N.W.2d 746 (2011)
- State v. Taylor, 287 Neb. 386, 842 N.W.2d 771 (2014)
- State v. Collins, 299 Neb. 160, 907 N.W.2d 721 (2018)
- State v. Haynes, 299 Neb. 249, 908 N.W.2d 40 (2018)
- State v. Vela, 297 Neb. 227, 900 N.W.2d 8 (2017)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018)
- Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)
- State v. Botts, 299 Neb. 806, 910 N.W.2d 779 (2018)

- State v. Schwaderer, 296 Neb. 932, 898 N.W.2d 318 (2017)
- State v. Ely, 295 Neb. 607, 889 N.W.2d 377 (2016)
- State v. Gonzales, 294 Neb. 627, 884 N.W.2d 102 (2016)
- Forrestal v. Magendantz, 848 F.2d 303 (1st Cir. 1988)
- State v. Robinson, 287 Neb. 606, 843 N.W.2d 672 (2014)
- State v. Epp, 299 Neb. 703, 910 N.W.2d 91 (2018)

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