

SUPREME COURT OF OHIO

State v. Sneed

96 Ohio St. 3d 348 (Ohio 2002) · Decided September 25, 2002

SUMMARY

The Ohio Supreme Court affirmed the denial of David Allen Sneed’s application to reopen his direct appeal under Ohio Appellate Rule 26(B). The court held that Sneed failed to raise a genuine issue showing ineffective assistance of appellate counsel under the Strickland standard.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	September 25, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sneed appealed as of right from the Stark County Court of Appeals' denial of his application to reopen his direct appeal under Ohio Appellate Rule 26(B), alleging ineffective assistance of appellate counsel.
STANDARD OF REVIEW	Whether the application raises a genuine issue as to a colorable claim of ineffective assistance of appellate counsel is assessed under the two-pronged Strickland standard, requiring deficient performance and a reasonable probability of success had the omitted claims been raised.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	David Allen Sneed v. State of Ohio

TOPICS

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

PRACTICE AREAS

- criminal appellate procedure
- ineffective assistance of counsel
- postconviction relief

QUESTIONS PRESENTED

1. Whether Sneed's App.R. 26(B) application raised a genuine issue as to a colorable claim that appellate counsel was constitutionally ineffective.
2. Whether Sneed established deficient appellate performance and a reasonable probability of success on the omitted issues.

HOLDINGS

1. An applicant seeking to reopen a direct appeal under App.R. 26(B) must establish a genuine issue as to whether the applicant has a colorable claim of ineffective assistance of appellate counsel. The applicant must show that counsel was deficient for failing to raise the proposed issues and that there was a reasonable probability of success had the issues been presented.

KEY QUOTATIONS

“To show ineffective assistance, Sneed must prove that his counsel were deficient for failing to raise the issues he now presents and that there was a reasonable probability of success had they presented those claims on appeal.” (¶ 6)

“In none of the three propositions of law has Sneed raised “a genuine issue as to whether [he] was deprived of the effective assistance of counsel on appeal” before the court of appeals, as required under App.R. 26(B) (5).” (¶ 8)

FACTUAL BACKGROUND

Sneed was convicted of aggravated murder in the death of Herbert M. Rowan and sentenced to death. His conviction and sentence were affirmed on direct appeal. He later filed an application to reopen the direct appeal under App.R. 26(B), alleging that appellate counsel had been ineffective for failing to raise three propositions of law.

PROCEDURAL HISTORY

Sneed was convicted of aggravated murder and sentenced to death. The court of appeals affirmed, and the Supreme Court of Ohio affirmed the conviction and sentence in 1992. After postconviction proceedings were denied and appellate review was declined, Sneed filed an App.R. 26(B) application alleging ineffective assistance of appellate counsel; the court of appeals denied the application, and the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Sneed (May 22, 1989), Stark App. No. CA-6976, 1989 WL 63272
- State v. Sneed, 63 Ohio St. 3d 3, 584 N.E.2d 1160 (1992)

- State v. Sneed (Sept. 29, 2000), Stark App. No. 1999CA00339, 2000 WL 1476140
- State v. Sneed, 91 Ohio St. 3d 1428, 741 N.E.2d 893 (2001)
- State v. Murnahan, 63 Ohio St. 3d 60, 584 N.E.2d 1204 (1992)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Spivey, 84 Ohio St. 3d 24, 25, 701 N.E.2d 696 (1998)
- State v. Bradley, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989)
- Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)
- State v. Sanders, 94 Ohio St. 3d 150, 151-152, 761 N.E.2d 18 (2002)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} Appellant, David Allen Sneed, challenges the denial of his application to reopen his direct appeal under App.R. 26(B). *349{¶ 2} Sneed was convicted of the aggravated murder of Herbert M. Rowan and sentenced to death. Upon appeal, the court of appeals affirmed the conviction and death sentence. State v. Sneed (May 22, 1989), Stark App. No. CA-6976, 1989 WL 63272.

On February 12, 1992, we also affirmed his conviction and sentence. State v. Sneed (1992), 63 Ohio St.3d 3, 584 N.E.2d 1160. {¶ 3} In addition, the trial court denied Sneed’s amended petition for postconviction relief, and the court of appeals affirmed that judgment. State v. Sneed (Sept. 29, 2000), Stark App. No. 1999CA00339, 2000 WL 1476140.

We declined to accept Sneed’s appeal. State v. Sneed (2001), 91 Ohio St.3d 1428, 741 N.E.2d 893. {¶ 4} On November 8, 2001, appellant filed the instant application for reopening with the court of appeals pursuant to App.R. 26(B) and State v. Murnahan (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, alleging ineffective assistance of appellate counsel in his direct appeal. {¶ 5} In denying appellant’s application for reopening, the court of appeals relied on the reasoning “contained in the State of Ohio’s response in opposition.” State v. Sneed (Jan.

14, 2002), Stark App. No. CA-6976. The cause is now before this court upon an appeal as of right. {¶ 6} We affirm the judgment of the court of appeals. The two-pronged analysis found in Strickland v. Washington (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, is the appropriate standard to assess whether Sneed has raised a “genuine issue” as to the ineffectiveness of appellate counsel in his request to reopen his appeal under App.R.

26(B)(5). See State v. Spivey (1998), 84 Ohio St.3d 24, 25, 701 N.E.2d 696. To show ineffective assistance, Sneed must prove that his counsel were deficient for failing to raise the issues he now presents and that there was a reasonable probability of success had they presented those claims on appeal. State v. Bradley (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph three of the syllabus.

Moreover, to justify reopening his appeal, Sneed “bears the burden of establishing that there was a ‘genuine issue’ as to whether he has a ‘colorable claim’ of ineffective assistance of counsel on appeal.” *State v. Spivey*, 84 Ohio St.3d at 25, 701 N.E.2d 696. {¶ 7} Strickland charges us to “appl[y] a heavy measure of deference to counsel’s judgments,” 466 U.S. at 691, 104 S.Ct.

2052, 80 L.Ed.2d 674, and to “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance,” *id.* at 689, 104 S.Ct. 2052, 80 L.Ed.2d 674. “Moreover, we must bear in mind that appellate counsel need not raise every possible issue in order to render constitutionally effective assistance. See *Jones v. Barnes* (1983), 463 U.S. 745, 103 S.Ct.

3308, 77 L.Ed.2d 987.” *State v. Sanders* (2002), 94 Ohio St.3d 150, 151-152, 761 N.E.2d 18. Robert D. Horowitz, Stark County Prosecuting Attorney, and Ronald Mark Caldwell, Assistant Prosecuting Attorney, for appellee. David H. Bodiker, Ohio Public Defender, and Christa M. Hohmann, Assistant State Public Defender, for appellant. {¶ 8} We have reviewed appellant’s three propositions of law alleging, *inter alia*, deficient performance by appellate counsel.

In none of the three propositions of law has Sneed raised “a genuine issue as to whether [he] was deprived of the effective assistance of counsel on appeal” before the court of appeals, as required under App.R. 26(B)(5). (Emphasis added.) This decision renders moot Sneed’s other issues. {¶ 9} Accordingly, we affirm the judgment of the court of appeals. Judgment affirmed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.