

SUPREME COURT OF MONTANA

Hammer v. State

2008 MT 342 (2008) · No. DA 07-0342 · Decided October 6, 2008

SUMMARY

The Montana Supreme Court affirmed the denial of Denise Hammer’s petition for postconviction relief following her convictions for arson and making a false report to law enforcement. The court held that counsel’s failure to object to a trial court comment and failure to make an offer of proof did not prejudice Hammer under the Strickland ineffective-assistance standard.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	W. William Leaphart; Karla M. Gray; Patricia Cotter; Jim Rice; John Warner
JURISDICTION	Montana
DECIDED	October 6, 2008
DOCKET	DA 07-0342
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a petition for postconviction relief asserting ineffective assistance of trial counsel.
STANDARD OF REVIEW	The court reviews the denial of postconviction relief for clear error as to factual findings and correctness as to legal conclusions. Ineffective-assistance claims, as mixed questions of law and fact, are reviewed de novo.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Denise Hammer, f/k/a Denise Olsen v. State of Montana

TOPICS

- state post-conviction relief
- ineffective assistance
- sixth amendment
- expert testimony
- appellate procedure

PRACTICE AREAS

- criminal law
- postconviction relief
- constitutional law
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether defense counsel's failure to object to the District Court's comment on Schefsky's qualifications constituted ineffective assistance of counsel.
2. Whether defense counsel's failure to make an offer of proof after Schefsky was disqualified as an expert constituted ineffective assistance of counsel.

HOLDINGS

1. A defendant asserting ineffective assistance of counsel must prove both deficient performance and prejudice; when the prejudice showing is insufficient, the court need not decide whether counsel's performance was deficient.
2. Hammer was not prejudiced because the substance and conclusion of Schefsky's report were already before the court and jury, and the record already contained the relevant information concerning his qualifications; an offer of proof would not have changed the result.
3. Hammer was not prejudiced by counsel's failure to object because the trial court's effort to limit irrelevant testimony and avoid needless consumption of time was permissible, and any objection would have been meritless.
4. The presumption of prejudice recognized in *United States v. Cronin* did not apply because counsel did not entirely fail to subject the prosecution's case to meaningful adversarial testing and the alleged errors did not undermine the reliability of the guilty verdict.

KEY QUOTATIONS

“To prevail on an ineffective assistance claim, a defendant must satisfy both prongs of this test.” (¶ 10)

“To show prejudice sufficient to satisfy the second prong of Strickland, a defendant must demonstrate that a reasonable possibility exists that, but for counsel’s unprofessional error, the result of the proceeding would have been different.” (¶ 11)

“Nothing in the record indicates that Hammer’s counsel “failed entirely to subject the prosecution’s case to meaningful adversarial testing.”” (¶ 13)

FACTUAL BACKGROUND

Hammer was convicted of arson and making a false report after a fire at her residence; the defense claimed the fire was accidental and caused by an electrical junction box. Defense counsel retained Brian Hattem and Richard Schefsky as potential fire and electrical experts, but Schefsky was not qualified to testify as an expert in forensic electrical engineering. Hammer alleged that counsel was ineffective for failing to object to the trial court's comment about Schefsky's qualifications and for failing to make an offer of proof after Schefsky was disqualified.

PROCEDURAL HISTORY

Hammer was convicted by a jury of felony arson and misdemeanor making a false report to law enforcement. The Montana Supreme Court affirmed her convictions on direct appeal, declining to review certain claims

because they were not preserved and dismissing her ineffective-assistance claims without prejudice. Hammer then sought postconviction relief on two ineffective-assistance grounds; after an evidentiary hearing, the District Court denied relief, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Whitlow v. State, 2008 MT 140, 343 Mont. 90, 183 P.3d 861
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Morgan, 2003 MT 193, 316 Mont. 509, 74 P.3d 1047
- State v. Olsen, 2004 MT 158, 322 Mont. 1, 92 P.3d 1204
- State v. Peck, 263 Mont. 1, 865 P.2d 304 (1993)
- United States v. Cronin, 466 U.S. 648 (1984)
- Davis v. Alaska, 415 U.S. 308 (1974)
- State v. Crawford, 2003 MT 118, 315 Mont. 480, 68 P.3d 848
- State v. Russette, 2002 MT 200, 311 Mont. 188, 53 P.3d 1256