

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Robert W. Johnson, Jr. v. David Ballard, Warden

No. 13-0894 (McDowell County 11-C-35) (W. Va. Apr. 25, 2014) · No. No. 13-0894 · Decided April 25, 2014

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Robert W. Johnson, Jr.'s post-conviction habeas petition challenging the effectiveness of his trial counsel. The court rejected claims concerning psychiatric evaluation, waiver of a preliminary hearing, delay in filing a direct appeal, failure to subpoena witnesses, and failure to seek additional DNA testing.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 25, 2014
DOCKET	No. 13-0894
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of McDowell County's denial of his amended petition for post-conviction habeas corpus relief, challenging only the denial of his ineffective-assistance-of-trial-counsel claims.
STANDARD OF REVIEW	In a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo. Ineffective-assistance claims are governed by the two-pronged Strickland test.
PRECEDENTIAL VALUE	Published memorandum decision; precedential status is identified as published in the supplied metadata, and the opinion was issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	Robert W. Johnson, Jr. v. David Ballard, Warden, Mount Olive Correctional Complex

TOPICS

state post-conviction relief

ineffective assistance

preliminary hearing

appellate procedure

criminal procedure

PRACTICE AREAS

post-conviction criminal procedure

ineffective assistance of counsel

criminal appeals

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to seek a fifteen-day inpatient psychiatric evaluation after Johnson refused to participate in an outpatient evaluation.
2. Whether trial counsel was ineffective for advising Johnson to waive a preliminary hearing.
3. Whether trial counsel's failure to timely file a direct appeal constituted ineffective assistance when Johnson was later resentenced and received a direct appeal that resulted in affirmance.
4. Whether trial counsel was ineffective for failing to subpoena or call two allegedly exculpatory witnesses.
5. Whether trial counsel was ineffective for failing to request additional DNA testing.

HOLDINGS

1. Trial counsel was not ineffective for failing to request a fifteen-day inpatient psychiatric evaluation because Johnson had refused to participate in the outpatient evaluation, counsel reasonably believed Johnson would not cooperate with further evaluation, and there was no reasonable probability that the additional evaluation would have produced a different trial outcome or a finding of mental illness.
2. Trial counsel was not ineffective for advising Johnson to waive the preliminary hearing because counsel reasonably made a strategic decision based on the available information and the strength of the State's probable-cause case, and Johnson failed to show that the hearing would have yielded additional information or changed the result.
3. Johnson suffered no prejudice from trial counsel's failure to timely pursue a direct appeal because resentencing restored his opportunity to appeal and the ensuing direct appeal resulted in affirmance of his conviction.
4. Trial counsel was not ineffective for failing to call Bobby Shadowing and Rick Johnson because decisions about which witnesses to call are strategic, and Johnson presented no evidence at the habeas hearing that either witness would have provided an alibi, relevant surveillance evidence, or a different trial outcome.
5. Trial counsel was not ineffective for declining to seek additional DNA testing because Johnson's assertion that testing would produce exculpatory evidence was speculative, the testing could have produced inculpatory evidence, and he failed to show a reasonable probability of a different result.

KEY QUOTATIONS

“In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to de novo review.” (at 2)

“In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” (at 2)

FACTUAL BACKGROUND

Johnson was convicted of first-degree murder after the victim was found dead with more than thirty stab wounds and blood matching the victim was found in the truck Johnson drove to North Carolina. Before trial, the circuit court ordered an outpatient psychiatric examination, but Johnson refused to participate. At the habeas omnibus hearing, trial counsel testified that Johnson appeared competent, that counsel strategically waived the preliminary hearing, and that counsel's decisions concerning witnesses and additional DNA testing were tactical.

PROCEDURAL HISTORY

Johnson was convicted of first-degree murder after a jury trial and sentenced to life imprisonment with the possibility of parole. His trial counsel failed to timely perfect a direct appeal, but the circuit court later resentenced Johnson, appointed habeas counsel filed a timely appeal, and this Court affirmed the conviction. The circuit court then denied Johnson's amended habeas petition, and the Supreme Court of Appeals affirmed that denial.

DISPOSITION

affirmed

CASES CITED

- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State v. Thomas, 157 W. Va. 640, 203 S.E.2d 445 (1974)
- State ex rel. Bradley v. Johnson, 152 W. Va. 655, 166 S.E.2d 137 (1969)
- State ex rel. Bratcher v. Cooke, 155 W. Va. 850, 188 S.E.2d 769 (1972)
- Carter v. Bordenkircher, 159 W. Va. 717, 724, 226 S.E.2d 711, 716 (1976)
- State v. Robert Johnson, No. 11-1765 (W. Va. Supreme Court, Apr. 12, 2013) (memorandum decision)