

SUPREME COURT OF FLORIDA

McCoy v. State

113 So. 3d 751 (Fla. 2013) · Decided May 2, 2013

SUMMARY

The Florida Supreme Court reviews Richard McCoy’s appeal from the denial of his motion for postconviction relief under Florida Rule of Criminal Procedure 3.851. McCoy alleged ineffective assistance of trial counsel and related constitutional and evidentiary errors arising from his conviction and death sentence for the first-degree murder of Shervie Ann Elliott. The opinion applies the Strickland standard and addresses claims concerning alibi witnesses, impeachment, trial evidence, and counsel’s investigation and presentation of the defense.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per curiam; Polston, C.J.; Pariente, J.; Lewis, J.; Quince, J.; Labarga, J.; Perry, J.; Canady, J.
JURISDICTION	Florida
DECIDED	May 2, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying McCoy's motion to vacate his first-degree murder conviction and death sentence under Florida Rule of Criminal Procedure 3.851.
STANDARD OF REVIEW	The court deferred to postconviction factual findings supported by competent, substantial evidence and reviewed legal conclusions de novo. Ineffective-assistance claims were evaluated under Strickland v. Washington's deficient-performance and prejudice requirements.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; precedential.
PARTIES	Richard McCoy v. State of Florida

TOPICS

- state post-conviction relief
- post-conviction relief
- ineffective assistance
- sentencing
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to present proposed alibi or impeachment witnesses concerning Marcel's June 14 conversation with McCoy.
2. Whether trial counsel was ineffective for failing to present Victor Lynn Williams as a witness regarding the victim's presence at the ABC Liquors store before the murder.
3. Whether trial counsel was ineffective for failing to object to religious references during voir dire and the penalty phase or for failing to move to strike the entire venire after a prospective juror made comments about Islam.
4. Whether trial counsel was ineffective for conceding during voir dire that a robbery had occurred.
5. Whether trial counsel was ineffective for failing to advise McCoy adequately about the consequences of testifying.
6. Whether trial counsel was ineffective for failing to present Marcel and witnesses from the Lee's Chicken robbery to impeach Marcel.
7. Whether the alleged individual errors constituted cumulative ineffective assistance.
8. Whether McCoy's *Ring v. Arizona* challenge to Florida's capital sentencing scheme was cognizable in postconviction proceedings.

HOLDINGS

1. McCoy failed to establish either deficient performance or prejudice under Strickland because the proposed testimony would not have materially contradicted Marcel's testimony and would not have created a reasonable probability of a different outcome.
2. Counsel was not ineffective for failing to object to the prosecutor's isolated reference to 'God given common sense' or for failing to strike the entire venire after one prospective juror made comments about Islam.
3. Counsel's concession during voir dire that a robbery had occurred was a reasonable strategic decision and did not constitute ineffective assistance.
4. McCoy failed to prove that counsel did not advise him about the consequences of testifying.
5. McCoy failed to establish deficient performance or prejudice from counsel's unsuccessful efforts to use Marcel and witnesses from the Lee's Chicken robbery for impeachment.
6. Because McCoy failed to prevail on any individual ineffective-assistance claim, he could not obtain relief on cumulative error.
7. McCoy's *Ring* challenge was procedurally barred because the same constitutional issue had been raised and rejected on direct appeal, and the claim was also without merit under then-controlling federal precedent.

KEY QUOTATIONS

“Both deficient performance and prejudice must be shown.” (708)

“Because counsel will not be deemed deficient for making a strategic decision to maintain credibility with a jury, this claim of ineffectiveness fails.” (716)

FACTUAL BACKGROUND

McCoy was convicted of murdering Shervie Ann Elliott during the robbery of an ABC Liquors store in Jacksonville. The trial evidence included surveillance video, three fingerprints belonging to McCoy on an ABC Liquors pouch found at the crime scene, and recorded and unrecorded statements to Zsa Zsa Marcel describing details of the robbery and murder. McCoy presented an alibi and testified that he had falsely claimed involvement to impress Marcel, but the jury found him guilty and the trial court imposed death after finding several aggravating circumstances.

PROCEDURAL HISTORY

A Duval County jury convicted McCoy of first-degree murder and recommended death, and the trial court imposed a death sentence. The Florida Supreme Court affirmed the conviction and sentence on direct appeal. After the postconviction court denied McCoy's second amended initial motion and supplemental addendum following an evidentiary hearing on specified claims, McCoy appealed. The Florida Supreme Court affirmed the denial of postconviction relief.

DISPOSITION

affirmed

CASES CITED

- McCoy v. State, 853 So. 2d 396 (Fla. 2003)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Michel v. Louisiana, 350 U.S. 91 (1955)
- Occhicone v. State, 768 So. 2d 1037 (Fla. 2000)
- Sochor v. State, 883 So. 2d 766 (Fla. 2004)
- Bradley v. State, 33 So. 3d 664 (Fla. 2010)
- Ferrell v. State, 29 So. 3d 959 (Fla. 2010)
- Stephens v. State, 975 So. 2d 405 (Fla. 2007)
- Johnson v. State, 903 So. 2d 888 (Fla. 2005)
- Brower v. State, 727 So. 2d 1026 (Fla. 4th DCA 1999)
- United States v. Malik, 241 Fed. App'x 873 (3d Cir. 2007)
- Mack v. Cain, 2008 WL 1901715 (W.D. La. 2008)
- Belcher v. State, 961 So. 2d 239 (Fla. 2007)
- Hutchinson v. State, 17 So. 3d 696 (Fla. 2009)
- Blanco v. State, 702 So. 2d 1250 (Fla. 1997)

- Demps v. State, 462 So. 2d 1074 (Fla. 1984)
- Cox v. State, 966 So. 2d 337 (Fla. 2007)
- Taylor v. State, 87 So. 3d 749 (Fla. 2012)
- Griffin v. State, 866 So. 2d 1 (Fla. 2003)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002)
- King v. Moore, 831 So. 2d 143 (Fla. 2002)
- Ferrell v. State, 918 So. 2d 163 (Fla. 2005)
- Evans v. Secretary, Florida Department of Corrections, 699 F.3d 1249 (11th Cir. 2012)

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