

SUPREME COURT OF LOUISIANA

State ex rel. Smoot v. State

225 So. 3d 463 (La. 2017) · Decided September 15, 2017

SUMMARY

The Louisiana Supreme Court denied supervisory relief to a state prisoner claiming ineffective assistance of counsel. The court held that the petitioner failed to satisfy the Strickland standard regarding counsel’s alleged failure to challenge searches and hearsay identification testimony, and explained that the denial was final subject to the narrow exceptions governing successive post-conviction applications.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	September 15, 2017
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Relator sought supervisory review of the denial of his application for state post-conviction relief alleging ineffective assistance of counsel.
STANDARD OF REVIEW	Ineffective-assistance claims are evaluated under Strickland v. Washington, requiring proof of deficient performance and resulting prejudice. In post-conviction proceedings, the petitioner bears the burden of proving entitlement to relief.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court per curiam decision
PARTIES	State ex rel. Smoot v. State

TOPICS

- post-conviction relief
- ineffective assistance
- successive petitions
- suppression of evidence
- hearsay

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- constitutional law
- evidence

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to file motions to suppress evidence obtained from Smoot's residence and vehicle.

2. Whether trial counsel was ineffective for failing to object to identification testimony as hearsay.
3. Whether Smoot was entitled to state post-conviction relief after failing to establish either deficient performance or prejudice under Strickland v. Washington.
4. Whether Smoot could pursue further state collateral review after fully litigating his application, absent a statutory exception for a successive application.

HOLDINGS

1. Smoot failed to establish ineffective assistance because the proposed suppression motions lacked merit and he did not show deficient performance or prejudice.
2. Smoot failed to establish ineffective assistance because the identification testimony was admissible and counsel had no meritorious hearsay objection.
3. After Smoot fully litigated his state post-conviction application, the denial was final and he exhausted his right to state collateral review unless he could establish a narrow statutory exception authorizing a successive application.

FACTUAL BACKGROUND

Smoot was convicted of second-degree murder after evidence was obtained from his residence and vehicle and identification testimony was presented at trial. In post-conviction proceedings, he claimed trial counsel was ineffective for failing to file motions to suppress searches of his residence and vehicle and for failing to object to hearsay identification testimony. The reviewing courts concluded that the challenged suppression motions and hearsay objection would have been meritless and that Smoot failed to prove prejudice.

PROCEDURAL HISTORY

Smoot was convicted of second-degree murder and sentenced to life imprisonment. His conviction was affirmed on appeal, and the Louisiana Supreme Court denied writs. The Twenty-Fourth Judicial District Court denied his application for post-conviction relief without further proceedings, and the Louisiana Supreme Court denied supervisory relief, finding that he failed to establish ineffective assistance of counsel and had fully litigated his state post-conviction claims.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

The district court was ordered to record a minute entry consistent with the per curiam opinion.

CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Washington, 491 So. 2d 1337 (La. 1986)

- State v. Legrand, 2002-1462 (La. 12/3/03), 864 So. 2d 129
- State v. Soler, 93-1042 (La. App. 5 Cir. 4/26/94), 636 So. 2d 1069
- Ortiz-Sandoval v. Clarke, 323 F.3d 1165 (9th Cir. 2003)
- Kimmelman v. Morrison, 477 U.S. 365 (1986)
- Northrop v. Trimble, 265 F.3d 372 (6th Cir. 2001)
- State v. Chisolm, 12-2278 (La. 10/22/12), 99 So. 3d 48
- State v. Long, 2003-KK-2592 (La. 9/9/04), 884 So. 2d 1176
- State v. Smith, 02-1842 (La. 9/20/02), 827 So. 2d 1122
- State v. Carter, 10-973 (La. App. 5 Cir. 8/30/11), 75 So. 3d 1
- State v. Washington, 11-716 (La. App. 5 Cir. 3/13/12), 90 So. 3d 1157
- State v. Smoot, 13-KA-453 (La. App. 5 Cir. 1/15/14), 134 So. 3d 1

OPINION

PER CURIAM.

ON SUPERVISORY WRITS TO THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON PER CURIAM: h Denied. Relator fails to show he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

We attach hereto and make a part hereof the district court's written reasons denying relief. Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8.

Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La. C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review.

The district court is ordered to record a minute entry consistent with this per curiam. | {Attachment
[[Image here]] [[Image here]] [[Image here]] On January 24,2013,toe petitioner was convicted of LSA-K.S. 14:30.1,8*90114 degree munfcr.

On January 31,2053,toocotaseaitettiredhimtol;fo£digri!Kintpeat. Hisoonvtétfanwas attorned oaappeal. dita v, Start, 13-KA-453 (La, App. S Cir. 1/15/14), 134 So'3d 1; writ denial, 2014-KQ-297 (La. 9/12/14) 147 So,3d 704, Petitioner now files an application fcr post-conviction relief, ailegtog-this Hallowing claims: 1. Ineffective assistance of counsel at trial An counsel f&Ueil to file a'motion to supplies search warrants.

2, Ineffective assistance of counsel at trial when trial counsel failed to reject hearsay identification. It is clear that the petitioner has a Sixth Amendment right to effective legal counsel. Under the well-known standard set out in *Strickland v. Washington*, 466 U.S. 668, 103 S.Ct. 2052, 80 L.Ed2d 674 (1984), and *State v. Washington*, 491 So.2d 1317 (Fla.1986), a defendant must be granted relief if the defendant proves (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced the defendant. «Scattered throughout the trial were rendered unfair and the verdict suspect.

Stott v. Legrand, 2002-4462 (La. 123/03), 864 So.2d 115. To be successful in arguing a denial of the right to assistance of counsel, a petitioner must prove deficient performance to the point that counsel is not acting as counsel within the meaning of the Sixth Amendment. A petitioner must also prove actual prejudice to the point that the result of the trial cannot be trusted.

It is absolutely undisputed that the prongs of the *Strickland* test must be established before relief will be granted by a reviewing court. Furthermore, there is a strong presumption that counsel's performance is within the wide range of effective representation. Effective counsel, however, does not mean that counsel and the reviewing court does not judge counsel's performance with the distorting benefits of hindsight, but rather determines whether counsel was reasonably likely to render effective assistance. *State v. Soler*, 93-1042 (La.App.

SA 4/26/94), 636 So.2d 1069, 1075. The issue of controlling federal and state jurisprudence, this court now turns to the specific claims of ineffective assistance made in the instant application and argued in the petitioner's memorandum in support. 1. Petitioner claims that counsel was ineffective for failing to file a motion to suppress the search and arrest. The Louisiana Supreme Court has explained, in evaluating the effectiveness of counsel's performance, that a claim based on a failure to pursue a motion to suppress, courts normally require the petitioner to show that the overruled motion to suppress would have been meritorious and that there is a reasonable probability that the jury would have reached a different verdict absent the introduction of the incriminating evidence, [[Image here]] -la.

Ortiz-Sandaval v. Clarice, 323 F.3d 1165, 1170 (9th Cir.2003) (citing *Kuhlman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed2d 305 (1986)). Thus, if a reasonably competent attorney could have suppressed the evidence and as a result, the State would have dismissed the charges, the petitioner may show a basis for relief. See *Northrop v. Trimble*, 265 VM 372, 383-84 (6th Cir.2001) (an habeas corpus) (conviction based on ineffective assistance: "(during his representation, [counsel] told that police had arguably seized Northrop based upon no more than an anonymous tip without any supporting verifiable detail.,).

Without this inadmissible cocaine evidence, Michigan, would obviously have had to meet the burden of proving Northrop possessed > cocaine,"); *tita* v. *Xehdmhaeh*, 153 Wash 126, 101 P.3d 80, 87 (Wash2004) (because contraband was legally seized the existence of no tatted thesis for the move to suppress the counsel's performance is clearly prejudicial). *State v. Zee*, 2014-2374 (U.

9/18/15). Petitioner first argues that counsel was ineffective for attorney to file a motion to suppress the evidence found at petitioner's home and challenges the warrant. However, as the State points out in its response, the detective presented evidence to the commissioner to justify a reasonable belief that petitioner committed the crime, and that evidence of the crime could be found at the residence, especially considering that petitioner was seen leaving the residence minutes before the gunshots were heard.

Upon the search, ammunition was recovered, establishing a nexus between the crime and the residence. Probable cause was established. Furthermore, the Louisiana Supreme Court has held that as long as an officer acting in good faith reasonably believes he is providing a magistrate with sufficient information for issuance of a search warrant, suppression of evidence is not required due to a later finding of lack of probable cause, *State v. Lons*, 2003-KK-2592 (La.

9/9/04), 884 So.2d 1176. Hence, in this case, even if with insufficient probable cause, there would be no basis for a motion to suppress, and any motion would be without merit, Petitioner argues that counsel was ineffective for attorney to file the motion to suppress the evidence found in petitioner's vehicle.

The court finds no merit to this claim, as the officers presented evidence sufficient to establish probable cause that evidence of the crime could be found in petitioner's vehicle, and insinuates that the officers acted in bad faith in presenting probable cause to the magistrate. Petitioner also argues that the officers searched the vehicle prior to altering the search warrant. As the State points out, to the contrary, the Fifth Circuit Court of Appeal has held that a search of a suspect's vehicle parked in front of a residence was valid pursuant to a warrant authorizing the search of a residence: Based on our review of the application, the warrant and the jurisprudence, we find that defendant's claim on this issue is without merit. Although the affidavit on which the warrant was based recites several times specifically to the Monte Carlo, the warrant itself does not refer to any vehicles.

However, a warrant authorizing the search of a particularly described premises permits the search of a vehicle located on the premises targeted for search and subject to the authority of the warrant. *State v. Smith*, 02-1842, p. 1 (1/9/20/02), 827 So.2d 1122, 1123 (per curiam)] *State v. Carter*, 10-973, p. 8 (La.App. 5 Cir. 8/30/10), 75 So.3d 1, 5.

The rationale behind this holding is that the vehicle is capable of concealing the sought-after contraband. *Id.* Accordingly, the search of the vehicle was valid pursuant to the warrant since it was parked in front of the residence which was the subject of the search and which was

partially described in the warrant. This assignment of error is without merit. *Safe v. Washington*, 11-716 (La. App.

5 Cir., 3/13/12), 90 So. 3d 1157, 2012 U.S. App. Ct. 2012). Hence, the state's motion failed to contest the search of the vehicle would be without merit. Petitioner sought to meet the Strickland requirements for proving ineffective assistance of counsel, as he alleged that the attorney acted deficiently, or that any prejudice resulted. Petitioner stated that counsel was ineffective for failing to object to hearsay identification testimony of Detective Goff during the hearing on the Motion to Suppress Identification and at trial.

Regarding the hearing on the Motion to Suppress Identification, hearsay evidence is admissible. *State v. Chisolm*, 12-2278 (La. 10/22/12), 99 So.3d 48. The testimony of the declarant presented at trial, under La. C.E. at 801(05)(1) is not hearsay if, the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is one of identification of a person made after perceiving the person.

As such, the statements made by Detective Goff at trial are statutorily not hearsay. The court finds no deficiency in counsel's performance in not objecting to the testimony, as any objection would have clearly been overruled and without merit. Furthermore, petitioner failed to prove prejudice.

Under LSA-Cr.P. art. 930.2, the petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted. The petitioner has not presented sufficient evidence in support of any of these claims, and thus he failed to meet his burden.

Under LSA-Cr.P. art. 929, if the court determines that the factual and legal issues can be resolved based upon application and answer, and supporting documents, the court may grant or deny relief in the proceedings.  