

SUPREME COURT OF GEORGIA

Trauth v. State, 283 Ga. 141

657 S.E.2d 225 (2008) · No. S08A0282 · Decided February 11, 2008

SUMMARY

The Supreme Court of Georgia affirmed the denial of Louis Trauth's motion to withdraw his guilty plea to malice murder. The court held that his trial attorneys adequately advised him regarding a possible voluntary manslaughter defense and that he failed to show ineffective assistance affecting his decision to plead guilty. The court also held that Trauth waived his separate ineffective-assistance claim concerning counsel who handled the withdrawal motion by failing to raise it at the earliest practicable moment.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Justice Melton
JURISDICTION	Georgia
DECIDED	February 11, 2008
DOCKET	S08A0282
DISPOSITION	affirmed
PROCEDURAL POSTURE	Trauth appealed the trial court's denial of his motion to withdraw his guilty plea to malice murder, asserting ineffective assistance of trial counsel in connection with advice regarding a voluntary manslaughter defense and guilty plea. He also raised, for the first time on appeal, an ineffective-assistance claim concerning counsel who handled the motion to withdraw the plea.
STANDARD OF REVIEW	The Supreme Court reviewed whether the trial court erred in denying the motion to withdraw the guilty plea and whether the record supported the trial court's findings concerning ineffective assistance of counsel. The opinion applied the deficient-performance and reasonable-probability-of-a-different-result standard for ineffective assistance claims and Georgia's earliest-practicable-moment rule for asserting ineffective assistance.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Louis Frank Trauth v. State of Georgia

TOPICS

ineffective assistance

plea bargaining

post-conviction relief

appellate procedure

criminal procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

ineffective assistance of counsel

plea withdrawal

QUESTIONS PRESENTED

1. Whether Trauth's trial attorneys rendered ineffective assistance by failing to adequately advise him about the possibility and viability of a voluntary manslaughter or crime-of-passion defense before he pleaded guilty.
2. Whether the trial court erred in denying Trauth's motion to withdraw his guilty plea based on counsel's failure to show him the psychiatric report.
3. Whether Trauth could raise for the first time on appeal an ineffective-assistance claim concerning counsel who represented him at the motion-to-withdraw hearing.

HOLDINGS

1. The trial court properly denied Trauth's motion to withdraw his guilty plea because the record showed that counsel discussed the voluntary manslaughter defense with him, accurately advised that it was highly unlikely to succeed under the facts, investigated the defense, and were prepared to proceed to trial; Trauth failed to establish ineffective assistance.
2. Trauth waived his claim that counsel who handled the motion to withdraw his guilty plea was ineffective because he failed to raise the claim at the earliest practicable moment after that counsel withdrew and instead filed a notice of appeal.

KEY QUOTATIONS

"[A] defendant who pleads guilty and seeks to overturn his conviction because of counsel's errors must show both that counsel's performance was deficient and that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." (226)

FACTUAL BACKGROUND

Trauth pleaded guilty to murdering his wife, whom he had shot twice in the head after initially shooting her while she slept and later attempting to suffocate her. Before entering the plea, his attorneys discussed a possible voluntary manslaughter or crime-of-passion defense, consulted a psychiatrist, reviewed the psychiatric evaluation, and attempted to negotiate a voluntary manslaughter plea. Trauth nevertheless stated that he did not want to go to trial because he was guilty and did not want to cause further embarrassment to his family.

PROCEDURAL HISTORY

Trauth was indicted in Forsyth County for malice murder, felony murder, and aggravated assault. He pleaded guilty to malice murder on August 2, 2006, and received a life sentence. After the trial court denied his amended

motion to withdraw the guilty plea following a hearing, Trauth filed a timely notice of appeal. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Harden v. Johnson, 280 Ga. 464, 629 S.E.2d 259 (2006)
- Johnson v. State, 282 Ga. 96, 646 S.E.2d 216 (2007)
- Weems v. State, 268 Ga. 142, 485 S.E.2d 767 (1997)
- Rios v. State, 281 Ga. 181, 637 S.E.2d 20 (2006)
- White v. Kelso, 261 Ga. 32, 401 S.E.2d 733 (1991)
- Threlkeld v. State, 250 Ga. App. 44, 550 S.E.2d 454 (2001)
- Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)

OPINION

MELTON, J.

657 S.E.2d 225 (2008) TRAUTH v. The STATE. No. S08A0282. Supreme Court of Georgia. February 11, 2008. Louis Frank Trauth, Waycross, pro se. *226 Penny Mane Penn, District Attorney, Thurbert E. Baker, Attorney General, Christopher Robert Johnson, Assistant Attorney General, for appellee. MELTON, Justice. Following the trial court's denial of his motion to withdraw his plea of guilty to the malice murder of his wife, Linda Sue Trauth,[1] Louis Trauth, acting pro se, appeals, contending that his trial attorneys rendered ineffective assistance of counsel in advising him regarding his guilty plea.

For the reasons set forth below, we affirm. 1. Trauth plead guilty to the malice murder of his wife on August 2, 2006.[2] The facts, as set forth at the guilty plea hearing, show that, approximately two weeks before Trauth murdered his wife, she informed him that she was having an affair.

On the day of the murder, Trauth made an audiotape in which he explained to his children that, by the time they found the tape, he would have killed himself and his wife. The recording then stops, and, when it starts again, Trauth explains that he has murdered his wife and that he now intends to kill himself. Rather than committing suicide, however, Trauth called one of his daughters who, in turn, alerted the police.

When police arrived at the Trauth's home, the body of Trauth's wife was discovered in the garage, and she had been shot twice in the head at close range. Police recovered a bullet from a couch cushion in an upstairs living room, and there was evidence that Trauth had tried to clean blood from the couch. A second bullet was found in the garage next to the body.

Trauth fully admitted in the guilty plea hearing to the murder of his wife. In addition to this evidence, the transcript of the hearing on Trauth's motion to withdraw his guilty plea shows that, in discussions with his attorneys following his arrest, Trauth provided additional details about the murder. Trauth explained that he initially shot his wife while she was sleeping on the upstairs couch.

He then dragged her to the garage where he discovered that she was still alive and breathing. At that point, Trauth attempted to suffocate his wife with plastic sheeting, but, when that did not work, he shot her a second time. Shortly thereafter, police arrived at his home. Trauth again admitted this factual scenario at the hearing regarding his motion to withdraw his plea.

2. Trauth now contends that the trial court erred by denying his motion to withdraw his guilty plea, arguing that his trial attorneys were ineffective by failing to properly inform him about the possibility of a voluntary manslaughter defense, including such a defense based on committing a crime of passion. "[A] defendant who pleads guilty and seeks to overturn his conviction because of counsel's errors must show both that counsel's performance was deficient and that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."

(Citations and punctuation omitted.). *Harden v. Johnson*, 280 Ga. 464, 629 S.E.2d 259 (2006). The record does not support Trauth's contentions. It shows that both of Trauth's trial counsel discussed the possibility of a voluntary manslaughter defense with him in some detail. Trial counsel properly informed Trauth, however, that any such defense was a "long shot" given the facts of the case.

They told Trauth, in any event, that he would have nothing to lose by going to trial and that they were prepared to do so. In fact, in *227 order to investigate the possibility of any such manslaughter defense, Trauth's trial attorneys asked Dr. Dave Davis, a psychiatrist, to analyze Trauth's mental state, and they attempted to negotiate a deal with the State which would allow Trauth to enter a voluntary manslaughter plea deal.

In addition, Trauth's attorneys reviewed the psychiatric report and informed Trauth that the conclusions therein were not particularly helpful to his chances of raising a viable voluntary manslaughter defense, given the factual scenario that he had described to them. Despite his attorneys' willingness to try his case, Trauth adamantly stated that he did not want to go to trial because he was clearly guilty of the offense and that he did not want to cause any further embarrassment to his family.

Trauth reiterated this sentiment at his guilty plea hearing. Therefore, the record fully supports the trial court's conclusion that Trauth had full knowledge of the availability and viability of a voluntary manslaughter defense at the time that he entered his guilty plea. Nonetheless, Trauth

complains that his attorneys never showed him the psychiatric report issued by Dr. Davis, although they may have discussed it with him.

More specifically, Trauth argues that, although the report indicated that he was generally competent at the time of the murder, it contains the following statement of which his attorneys did not make him aware: "The Court may wish to consider the circumstances of Mr. Trauth's behavior, in that it does appear to be a crime of passion." Trauth's attorneys did, however, make it clear that the viability of any type of voluntary manslaughter defense was highly unlikely.

Given the facts of this case, it cannot be said that this advice, even considering the psychiatrist's conclusion, was inaccurate or unreasonable. See *Johnson v. State*, 282 Ga. 96(2), 646 S.E.2d 216 (2007). Moreover, as pointed out by the trial court, Dr. Davis' statement would have been inadmissible at trial as an opinion on the ultimate issue and could not, in any event, have helped Trauth's case.

See, e.g., *Weems v. State*, 268 Ga. 142(3), 485 S.E.2d 767 (1997) (whether defendant acted in self-defense not beyond ken of jury). Accordingly, the trial court did not err by denying Trauth's motion to withdraw his guilty plea. *Rios v. State*, 281 Ga. 181(2), 637 S.E.2d 20 (2006). 3.

For the first time on appeal, Trauth contends that appointed counsel who handled his motion to withdraw his guilty plea hearing provided ineffective assistance. The record shows, however, that this counsel withdrew following the hearing, and, rather than requesting a hearing regarding counsel's performance, Trauth filed his notice of appeal. A claim of ineffective assistance of counsel must be filed at the earliest practicable moment, or it is considered to be waived.

White v. Kelso, 261 Ga. 32, 401 S.E.2d 733 (1991). In this case, Trauth took over his own case following his counsel's departure and did nothing to raise his ineffective assistance claims, although he could have filed a motion with the trial court at that time. Instead, Trauth chose to file a notice of appeal.

In doing so, Trauth failed to raise his claim of ineffective assistance at the earliest practicable moment. See *Threlkeld v. State*, 250 Ga.App. 44(1), 550 S.E.2d 454 (2001). Judgment affirmed. All the Justices concur. NOTES [1] On March 8, 2004, Trauth was indicted in Forsyth County for the malice murder, felony murder, and aggravated assault of Linda Sue Trauth, his wife.

Trauth pled guilty to malice murder on August 2, 2006, and he was sentenced to life imprisonment. Trauth filed a timely motion to withdraw his guilty plea which he amended on November 30, 2006 and January 8, 2007. Following a hearing, the trial court denied the motion on June 26, 2007, and Trauth filed a notice of appeal on July 25, 2007. Trauth's appeal was timely docketed in this Court on October 19, 2007, and submitted for decision on the briefs.

[2] Trauth was represented by counsel at the guilty plea hearing, and he signed a statement acknowledging that he understood his plea and the rights he would be waiving by entering it, The trial judge thoroughly reviewed these rights with Trauth in accordance with *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), and Trauth waived them.