

NORTH DAKOTA SUPREME COURT

Ratliff v. State

2016 ND 129 (2016) · No. 20150352 · Decided June 30, 2016

SUMMARY

The North Dakota Supreme Court affirmed the denial of Nathan Ratliff’s application for post-conviction relief. The court rejected his claims of ineffective assistance concerning the right to testify and speedy trial, and upheld his sentencing as an habitual offender based on a prior felony conviction and probation revocation order.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Carol Ronning Kapsner, Justice; Carol Ronning Kapsner; Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	June 30, 2016
DOCKET	20150352
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of an application for post-conviction relief in which Ratliff alleged ineffective assistance of counsel and improper habitual-offender sentencing.
STANDARD OF REVIEW	Post-conviction findings of fact are reviewed for clear error under N.D.R.Civ.P. 52(a), while questions of law are fully reviewable. Ineffective-assistance claims present mixed questions of law and fact and are fully reviewable on appeal. For speedy-trial issues, factual findings are reviewed for clear error and the ultimate speedy-trial determination is reviewed de novo.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Nathan Ratliff v. State of North Dakota

TOPICS

- state post-conviction relief
- ineffective assistance
- speedy trial
- sentencing
- evidence

PRACTICE AREAS

criminal procedure

post-conviction relief

sentencing

constitutional law

QUESTIONS PRESENTED

1. Whether Ratliff received ineffective assistance of counsel because trial counsel did not call him to testify.
2. Whether Ratliff received ineffective assistance of counsel because trial counsel did not make an earlier demand for a speedy trial.
3. Whether the district court properly determined that Ratliff's prior conviction qualified as a felony for habitual-offender sentencing after probation was revoked.
4. Whether the district court properly took judicial notice of the order revoking probation.

HOLDINGS

1. Ratliff did not establish ineffective assistance of counsel or a violation of his constitutional right to testify because he failed to show that he affirmatively asserted the right to testify and failed to demonstrate that his testimony would probably have changed the outcome.
2. Ratliff did not establish ineffective assistance arising from counsel's failure to make an earlier speedy-trial demand because he failed to show that an earlier trial would probably have produced a different result.
3. A prior felony conviction followed by revocation of probation remains qualifying as a felony for purposes of the habitual-offender statute, even though the original sentence did not exceed one year.
4. The district court properly took judicial notice of the signed judicial order revoking Ratliff's probation.

KEY QUOTATIONS

“When determining whether a defendant has been denied the right to a speedy trial, courts must balance four factors: (1) the length of the delay, (2) the reason for the delay, (3) the accused’s assertion of his right to a speedy trial, and (4) the prejudice to the accused.” (¶ 5)

“In fixing sentences, a trial judge is allowed the widest possible range of information in exercising her discretion.” (¶ 11)

FACTUAL BACKGROUND

Ratliff was convicted of multiple serious felony offenses after being tried with multiple codefendants, with at least 40 potential witnesses identified and security concerns affecting scheduling. He alleged that trial counsel was ineffective for failing to demand a speedy trial and for not calling him to testify. He also challenged his habitual-offender sentence, arguing that a prior conviction was a misdemeanor because the original sentence did not exceed one year, despite a later probation revocation.

PROCEDURAL HISTORY

A jury convicted Ratliff of robbery, burglary, aggravated assault, theft of property, and felonious restraint. The North Dakota Supreme Court affirmed his convictions in *State v. Ratliff*, 2014 ND 156. Ratliff filed an application for post-conviction relief in October 2014, later supplemented by appointed counsel. After a hearing, the district court dismissed the application, and Ratliff appealed.

DISPOSITION

affirmed

CASES CITED

- *State v. Ratliff*, 2014 ND 156, 849 N.W.2d 183
- *Syvertson v. State*, 2005 ND 128, ¶ 4, 699 N.W.2d 855
- *Greywind v. State*, 2004 ND 213, ¶ 5, 689 N.W.2d 390
- *Sambursky v. State*, 2008 ND 133, ¶ 7, 751 N.W.2d 247
- *Chisholm v. State*, 2015 ND 279, ¶ 8, 871 N.W.2d 595
- *Roth v. State*, 2007 ND 112, ¶¶ 7-9, 735 N.W.2d 882
- *Rock v. Arkansas*, 483 U.S. 44, 49-53 (1987)
- *Jones v. Barnes*, 463 U.S. 745, 751 (1983)
- *United States v. Pennycooke*, 65 F.3d 9, 11-12 (3d Cir. 1995)
- *State v. Antoine*, 1997 ND 100, ¶ 5, 564 N.W.2d 637
- *Grand Forks v. Gale*, 2016 ND 58, ¶¶ 6, 8, 876 N.W.2d 701
- *State v. Moran*, 2006 ND 62, ¶ 8, 711 N.W.2d 915
- *State v. Carpenter*, 2011 ND 20, ¶ 18, 793 N.W.2d 765
- *State v. Buchholz*, 2005 ND 30, ¶ 8, 692 N.W.2d 105
- *State v. Cummings*, 386 N.W.2d 468, 469 (N.D. 1986)