

SUPREME COURT OF GEORGIA

Hung v. State, 282 Ga. 684

653 S.E.2d 48 (2007) · No. S07A1679 · Decided November 5, 2007

SUMMARY

The Supreme Court of Georgia affirmed Mac The Hung's convictions for malice murder and three counts of aggravated assault, holding that the evidence was sufficient to support the verdicts. The court remanded the case for an evidentiary hearing on Hung's claims of ineffective assistance of trial counsel because the issue was raised at the first practicable opportunity. The court held that the alleged ineffectiveness of counsel who handled the motion for new trial was moot and that counsel was not deficient for failing to challenge another attorney from the same public defender's office.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	November 5, 2007
DOCKET	S07A1679
DISPOSITION	other
PROCEDURAL POSTURE	Appellant appealed judgments of conviction for malice murder and three counts of aggravated assault and moved to remand for an evidentiary hearing on ineffective assistance of trial counsel.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether, viewing the evidence in the light most favorable to the verdict, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. The ineffective-assistance issue required remand for an evidentiary hearing because it had not previously been raised at the first practicable opportunity.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Georgia.
PARTIES	Mac The Hung v. The State

TOPICS

ineffective assistance

preservation of error

appellate procedure

post-conviction relief

criminal procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

post-conviction relief

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Hung's convictions for malice murder and three counts of aggravated assault.
2. Whether Hung's ineffective-assistance-of-trial-counsel claims were procedurally preserved when the attorney who handled the motion for new trial was from the same public defender's office as trial counsel.
3. Whether counsel who handled the motion for new trial rendered ineffective assistance by failing to raise ineffective assistance of trial counsel.

HOLDINGS

1. The evidence was sufficient to authorize a rational trier of fact to find Hung guilty beyond a reasonable doubt of malice murder and three counts of aggravated assault.
2. A defendant's ineffective-assistance claims are not barred when the attorney who handled the motion for new trial was from the same public defender's office as trial counsel; the claims are raised at the first practicable moment when presented on appeal after the motion for new trial.
3. The question whether motion-for-new-trial counsel was ineffective for failing to raise ineffective assistance of trial counsel was moot, and the failure could not constitute deficient performance under the circumstances.

KEY QUOTATIONS

"Because this appeal was [Appellant's] first opportunity to raise the issue of ineffective assistance of trial counsel, we will remand the case for an evidentiary hearing on that claim." (49)

"Moreover, such failure cannot be deemed a deficient performance, as 'it would not be reasonable to expect one member of a [public defender's office] to assert the ineffectiveness of another member, where one represented a defendant at trial and the other represented him on motion for new trial. . . .'" (50)

FACTUAL BACKGROUND

Four victims drove into an apartment complex to pick up a friend. Two men shot into the vehicle, striking three occupants and killing one. Two victims positively identified Hung and his co-defendant Thach Le as the shooters.

PROCEDURAL HISTORY

Hung was tried jointly with co-defendant Thach Le, and the jury found him guilty of malice murder and three aggravated assaults. The trial court entered convictions and sentences, and denied Hung's motion for new trial.

After a notice of appeal was filed, current appellate counsel moved to remand the case for consideration of ineffective-assistance claims. The Supreme Court of Georgia affirmed the judgments but remanded for an evidentiary hearing on trial counsel's alleged ineffectiveness.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand for an evidentiary hearing on Hung's claims of ineffective assistance of trial counsel. The judgments of conviction were affirmed.

CASES CITED

- Le v. State, 276 Ga. 321, 577 S.E.2d 786 (2003)
- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Shadron v. State, 275 Ga. 767, 769(2), 573 S.E.2d 73 (2002)
- Ryan v. Thomas, 261 Ga. 661, 662, 409 S.E.2d 507 (1991)
- Kirkland v. State, 271 Ga. 217, 220(4), 518 S.E.2d 687 (1999)
- Chatman v. Mancill, 280 Ga. 253, 255(1), 626 S.E.2d 102 (2006)