

SUPREME COURT OF NEBRASKA

State of Nebraska v. John W. Dalton, Jr.

State v. Dalton, 307 Neb. 465 (2020) · No. No. S-19-1192 · Decided October 9, 2020

SUMMARY

The Nebraska Supreme Court reviews John W. Dalton Jr.’s appeal from the denial of postconviction relief. The court affirms the finding that counsel was not ineffective for failing to file a direct appeal that Dalton did not request, but vacates and remands the disposition of Dalton’s separate ineffective-assistance claim concerning counsel’s failure to investigate. The court also leaves undisturbed the denial of Dalton’s stand-alone excessive-sentence claim as procedurally barred.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	October 9, 2020
DOCKET	No. S-19-1192
DISPOSITION	other
PROCEDURAL POSTURE	Dalton appealed from an order denying his motion for postconviction relief after an evidentiary hearing on his claim that counsel was ineffective for failing to file a direct appeal. The same order denied without an evidentiary hearing his separate ineffective-assistance claim concerning counsel's failure to investigate and his stand-alone excessive-sentence claim.
STANDARD OF REVIEW	Ineffective-assistance claims present mixed questions of law and fact. The appellate court reviews factual findings for clear error and independently reviews counsel's performance and prejudice determinations. In a postconviction evidentiary hearing, the trial judge resolves conflicts in evidence, witness credibility, and factual questions.
PRECEDENTIAL VALUE	published, precedential
PARTIES	John W. Dalton, Jr. v. State of Nebraska

TOPICS

post-conviction relief

ineffective assistance

right to counsel

appellate procedure

preservation of error

PRACTICE AREAS

criminal procedure

post-conviction relief

ineffective assistance of counsel

appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to file a direct appeal when the defendant had been informed of the right to appeal but had not expressly requested an appeal.
2. Whether the district court properly disposed of other ineffective-assistance postconviction claims before final resolution and mandate concerning the claim seeking a new direct appeal.
3. Whether Dalton's stand-alone claim that his sentences were unconstitutionally excessive was procedurally barred in postconviction proceedings because it could have been raised on direct appeal.

HOLDINGS

1. Counsel is not ineffective, and prejudice is not presumed, when the defendant remains silent after being informed of the right to appeal and how to communicate a request for an appeal. That circumstance is not analogous to counsel's ignoring an express directive to file an appeal.
2. A defendant seeking postconviction relief based on ineffective assistance must show deficient performance and resulting prejudice under *Strickland v. Washington*.
3. When a postconviction motion combines an ineffective-assistance claim seeking a new direct appeal with other ineffective-assistance claims seeking a new trial, the district court must first resolve the direct-appeal claim, enter a final order on that claim alone, and wait for appellate resolution or expiration of the appeal period before resolving the remaining claims.
4. A stand-alone postconviction claim that a sentence is unconstitutionally excessive is procedurally barred when the issue was known and could have been litigated on direct appeal.

KEY QUOTATIONS

"Failing to directly appeal when the defendant is silent after being informed of the right to appeal and the manner to communicate the desire to appeal is not analogous to the situation where counsel ignores an express directive by the client to file a direct appeal." (at 472-473)

"The responsibility for requesting an appeal remains with the defendant." (at 473)

"A motion for postconviction relief cannot be used to secure review of issues which were known to the defendant and which were or could have been litigated on direct appeal." (at 475-476)

FACTUAL BACKGROUND

Dalton was charged with seven felonies arising from the deaths of three people. He accepted a plea agreement under which the State agreed not to seek the death penalty, pleaded guilty to three counts of first degree murder

and related firearm offenses, and received consecutive sentences. After sentencing, counsel informed him of his right to appeal and how to request an appeal, but the district court found that Dalton had not directed counsel to file one. Dalton later filed a postconviction motion alleging that counsel failed to file the requested appeal and also failed to investigate the case adequately before advising him to plead guilty.

PROCEDURAL HISTORY

Dalton pleaded guilty to seven felony counts and received consecutive sentences, including three life sentences. No direct appeal was filed. He later sought postconviction relief, alleging ineffective assistance for failure to file an appeal, ineffective assistance in investigating the case before the pleas, and unconstitutional excessiveness of his sentences. The district court denied the direct-appeal ineffective-assistance claim after an evidentiary hearing and denied the remaining claims; the Nebraska Supreme Court affirmed in part, vacated in part, and remanded.

DISPOSITION

other

REMAND INSTRUCTIONS

The portion of the district court's order denying Dalton's ineffective-assistance claim based on counsel's failure to investigate is vacated. The cause is remanded for further proceedings consistent with the requirement that the district court address that claim only after final resolution of the claim concerning failure to file a direct appeal. The denial of postconviction relief on the failure-to-file-appeal claim and the stand-alone excessive-sentence claim remains affirmed.

CASES CITED

- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Sierra, 305 Neb. 249, 939 N.W.2d 808 (2020)
- State v. Beehn, 303 Neb. 172, 927 N.W.2d 793 (2019)
- State v. Determan, 292 Neb. 557, 873 N.W.2d 390 (2016)
- State v. Hessler, 295 Neb. 70, 886 N.W.2d 280 (2016)
- State v. Dunkin, 283 Neb. 30, 807 N.W.2d 744 (2012)
- State v. Benzel, 269 Neb. 1, 689 N.W.2d 852 (2004)
- State v. Wagner, 271 Neb. 253, 710 N.W.2d 627 (2006)
- State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000)
- State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008)
- Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)
- Ex parte Hull, 312 U.S. 546, 61 S. Ct. 640, 85 L. Ed. 1034 (1941)
- State v. Moore, 272 Neb. 71, 718 N.W.2d 537 (2006)