

SUPREME COURT OF GEORGIA

Coleman v. State, 278 Ga. 493

604 S.E.2d 157 (2004) · No. S04A1252 · Decided October 12, 2004

SUMMARY

The Supreme Court of Georgia affirmed the denial of Michael Coleman's motion for permission to file an out-of-time appeal from his guilty plea to malice murder. The court held that an ineffective-assistance claim relating to the guilty plea could not be raised in a direct appeal on the existing record and that the proper remedy was a motion to withdraw the plea or, apparently, habeas corpus relief.

OPINION

SEARS, J.

604 S.E.2d 157 (2004) 278 Ga. 493 COLEMAN v. The STATE. No. S04A1252. Supreme Court of Georgia. October 12, 2004. *158 Michael Coleman, Sparta, pro se. Dennis C. Sanders, Dist. Atty., Durwood R. Davis, Asst. Dist. Atty., for appellee. SEARS, Presiding Justice. Appellant Michael Coleman pled guilty to one count of malice murder in June 1990.

In January 2004, proceeding pro se, he filed a motion seeking permission to file an out-of-time appeal. The trial court denied the motion, and Coleman appeals. For the reasons explained below, we affirm. 1. Having reviewed the record, we conclude it establishes that when entering his guilty plea, Coleman acknowledged that: (1) he understood his waiver of the rights enumerated in Uniform Superior Court Rule (USCR) 33.8; (2) he understood the nature of the charges against him; (3) he had conferred with counsel about the consequences of his plea; and (4) his plea was freely and voluntarily entered.[1] 2.

Coleman alleges that counsel was ineffective for failing to adequately advise him in connection with his guilty plea. In *Smith v. State*,[2] this Court held that: A criminal defendant has the absolute right to file a timely direct appeal from a judgment of conviction and sentence entered after a jury or bench trial.

However... [a] criminal defendant has no unqualified right to file a direct appeal from a judgment of conviction and sentence entered on a guilty plea. A direct appeal will lie from a judgment of conviction and sentence entered on a guilty plea only if the issue on appeal can be resolved by facts appearing in the record.[3] When a defendant appeals from a guilty plea on the grounds of ineffective assistance of trial counsel, "the issues which he seeks to raise on appeal can be developed only in the context of a post-plea hearing."[4] Accordingly, such a defendant may not file a direct appeal where the only evidence of record is a transcript of the guilty plea hearing.

Rather, the defendant's proper remedy is to file a motion to withdraw his guilty plea, develop the record regarding his claim of ineffectiveness, and then appeal a denial of that motion. In this case, Coleman did not file a motion to withdraw his guilty plea and raise the issue of whether trial counsel was ineffective, and the only evidence of record is the transcription of his guilty plea hearing.

Accordingly, under the precedent discussed above, Coleman cannot challenge the effectiveness of trial counsel in a direct appeal. It follows that the trial court properly denied the motion to file an out-of-time appeal.[5] Judgment affirmed. All the Justices concur. NOTES [1] See *Roberts v. Greenway*, 233 Ga. 473, 475, 211 S.E.2d 764 (1975).

[2] 266 Ga. 687, 470 S.E.2d 436 (1996). [3] 266 Ga. at 687, 470 S.E.2d 436. See also *Grantham v. State*, 267 Ga. 635, 481 S.E.2d 219 (1997). [4] *Caine v. State*, 266 Ga. 421, 422, 467 S.E.2d 570 (1996). [5] We also note that because the trial court's jurisdiction to entertain a motion to withdraw the guilty plea ended after the term of court in which the judgment of conviction was rendered, it appears that Coleman's only remaining recourse is to seek relief under the writ of habeas corpus.

Morrow v. State, 266 Ga. 3, 4, 463 S.E.2d 472 (1995).