

SUPREME COURT OF RHODE ISLAND

DeJesus v. State

117 A.3d 414 (R.I. 2015) · Decided June 5, 2015

SUMMARY

The Rhode Island Supreme Court vacated the denial of Jose DeJesus's application for post-conviction relief and remanded for an evidentiary hearing on his ineffective-assistance-of-counsel claims. The court affirmed the determination that his Confrontation Clause challenge was procedurally barred because it had been addressed on direct appeal.

CASE DETAILS

COURT	Supreme Court of Rhode Island
JURISDICTION	Rhode Island
DECIDED	June 5, 2015
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the denial of an application for post-conviction relief. The Supreme Court summarily decided the appeal, affirmed the procedural-bar ruling concerning the Confrontation Clause claim, and vacated and remanded the denial of the ineffective-assistance claim for an evidentiary hearing.
PRECEDENTIAL VALUE	published opinion
PARTIES	Jose DeJesus v. State

TOPICS

state post-conviction relief ineffective assistance sixth amendment appellate procedure

PRACTICE AREAS

state post-conviction relief criminal procedure ineffective assistance of counsel appellate procedure

QUESTIONS PRESENTED

1. Whether DeJesus's Sixth Amendment Confrontation Clause challenge to a recorded statement was procedurally barred because the issue had been decided on direct appeal.
2. Whether the Superior Court properly denied DeJesus's application for post-conviction relief on his ineffective-assistance-of-counsel claims without providing a meaningful opportunity to present them and

without conducting an evidentiary hearing.

HOLDINGS

1. The challenge to the recorded statement was procedurally barred by res judicata because the Supreme Court had addressed the issue on direct appeal.
2. The Superior Court could not properly deny DeJesus's ineffective-assistance application on the existing record because he was not given a meaningful opportunity to present his claims and the factual findings appeared to rest on appointed counsel's no-merit memorandum rather than trial-transcript evidence or evidence presented at a post-conviction hearing.

KEY QUOTATIONS

“It is clear to us, however, that DeJesus’s application was denied at the June 8, 2009 hearing, which was before he had filed his motion to have the application decided “on briefs.”” (415)

“With respect to DeJesus’s contention of ineffective assistance of counsel, however, the record reveals that he was not given a meaningful opportunity to present his claims.” (415)

FACTUAL BACKGROUND

DeJesus was convicted after a jury trial of murder, first-degree robbery, discharging a firearm during the commission of a crime of violence with death resulting, carrying a pistol without a license, and possessing a firearm after a prior conviction for a crime of violence. He received multiple life sentences and concurrent ten-year sentences, and the Supreme Court affirmed his convictions on direct appeal. In post-conviction proceedings, he alleged that trial counsel was ineffective for failing to call two witnesses and investigate facts relevant to his defense. The Superior Court denied relief after appointed counsel withdrew, but the record did not show that DeJesus had a meaningful opportunity to present those claims or that the hearing justice relied on evidence developed at a post-conviction hearing.

PROCEDURAL HISTORY

After a jury convicted DeJesus of multiple homicide, robbery, firearm, and weapons offenses, the Supreme Court affirmed his convictions on direct appeal. DeJesus then filed an application for post-conviction relief and obtained appointed counsel. Appointed counsel moved to withdraw under *Shatney v. State*, and the Superior Court granted the motion and denied the application at a June 8, 2009 hearing. Although DeJesus later filed a pro se motion and memorandum seeking decision on the briefs, judgment did not enter until April 2, 2010. The Supreme Court vacated the judgment as to the ineffective-assistance claim and remanded for an evidentiary hearing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand to the Rhode Island Superior Court for an evidentiary hearing and findings of fact regarding DeJesus's ineffective-assistance-of-counsel claim. The Superior Court's ruling that the Confrontation Clause challenge was procedurally barred was affirmed.

CASES CITED

- State v. DeJesus, 947 A.2d 873, 882-83, 886 (R.I. 2008)
- Shatney v. State, 755 A.2d 130, 135 (R.I. 2000)

OPINION

PER CURIAM.

ORDER The applicant, Jose DeJesus, appeals from the denial of his application for post-conviction relief. This case came before the Supreme Court pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not be summarily decided.

After considering, the parties' written and oral submissions and reviewing the record, we conclude that cause has not been shown and that this case may be decided without further briefing or argument. For the reasons set forth in this order, we vacate the judgment of the Superior Court and remand the matter for a hearing on DeJesus's application for postconviction relief.

After a jury trial in Superior Court, DeJesus was convicted of murder, first-degree robbery, discharging a firearm during the commission of a crime of violence with death resulting, carrying a pistol without a license, and possessing a firearm after a previous conviction for a crime of violence. He was sentenced to two terms of life imprisonment to run concurrently, a third term of life imprisonment to be served consecutively, and two concurrent ten-year terms.

This Court affirmed De-Jesus's convictions on appeal. State v. DeJesus, 947 A.2d 873, 886 (R.I.2008). On August 1, 2008, DeJesus filed a pro se application for postconviction relief, as well as a motion to appoint counsel. Appointed counsel entered an appearance on September 23, 2008; on April 20, 2009, appointed counsel filed a motion to withdraw and a supporting memorandum pursuant to Shatney v. State, 755 A.2d 130, 135 (R.I.2000).

A short hearing was conducted on June 8, 2009, during which the hearing justice granted appointed counsel's motion to withdraw and then denied Dejesus's application for postconviction relief. The travel of this case is somewhat complicated by the fact that judgment did not enter until April 2, 2010.

On July 1, 2009, nearly one month after the June 8, 2009 hearing, DeJesus filed pro se a motion captioned "motion to decide this matter on briefs and forgo oral arguments," together with a memorandum in support of his application for postconviction relief.

The hearing justice acknowledged receipt of the memorandum in an “order denying and dismissing application for post convicted [sic] relief,” but stated that the memorandum “simply echoes the contentions that were previously addressed by [appointed counsel], which he, as well as this [c]ourt, found to be without merit.” It is clear to us, however, that DeJesus’s application was denied at the June 8, 2009 hearing, which was before he had filed his motion to have the application decided “on briefs.”¹ On appeal, DeJesus raises two issues: (1) ineffective assistance of counsel for failure to call two witnesses to testify on his behalf and for not investigating facts *415deemed pertinent to his defense; and (2) error by the trial justice in denying his Sixth Amendment right to confront witnesses against him with respect to a recorded statement that was played to the jury.

As the hearing justice ruled at the June 8, 2009 hearing, the Confrontation Clause challenge to the recorded statement was addressed by this Court on direct appeal and is therefore procedurally barred by the doctrine of res judicata. See DeJesus, 947 A.2d at 882-83.

We affirm the hearing justice’s ruling in that regard. With respect to DeJesus’s contention of ineffective assistance of counsel, however, the record reveals that he was not given a meaningful opportunity to present his claims.

Moreover, the hearing justice’s factual findings appear to be predicated upon appointed counsel’s no-merit memorandum, rather than upon the trial transcript or any evidence adduced at the post-conviction-relief hearing.

Accordingly, and on the record before us, we vacate the judgment and remand this case to the Superior Court for an evidentiary hearing and findings of fact regarding DeJesus’s claim of ineffective assistance of counsel..

We note that the Attorney General never filed a response to DeJesus’s motion.