

SUPREME COURT OF VIRGINIA

Lovitt v. Warden, Sussex I State Prison, 266 Va. 216

585 S.E.2d 801 (2003) · No. Record No. 012663 · Decided September 12, 2003

SUMMARY

The Supreme Court of Virginia considers Robin M. Lovitt’s habeas corpus petition challenging his capital-murder and robbery convictions. The petition raises claims concerning the destruction of trial exhibits, alleged suppression of exculpatory evidence under *Brady v. Maryland*, and ineffective assistance of counsel. The opinion discusses the evidentiary hearing conducted pursuant to the court’s order and the applicable standards of review.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Barbara Milano Keenan; All the Justices
JURISDICTION	Virginia
DECIDED	September 12, 2003
DOCKET	Record No. 012663
DISPOSITION	dismissed
PROCEDURAL POSTURE	Lovitt sought state habeas corpus relief under Code § 8.01-654 after affirmance of his capital-murder and robbery convictions and denial of certiorari by the United States Supreme Court. The Supreme Court of Virginia ordered an evidentiary hearing in the Circuit Court of Arlington County, which submitted findings of fact and recommended conclusions of law. The Supreme Court reviewed the habeas claims and dismissed the petition.
STANDARD OF REVIEW	The court deferred to the circuit court's factual findings unless plainly wrong or unsupported by the evidence, but reviewed recommended conclusions of law, including mixed questions of law and fact, de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robin M. Lovitt v. Warden, Sussex I State Prison

TOPICS

state post-conviction relief

habeas corpus

ineffective assistance

due process

actual innocence

PRACTICE AREAS

state habeas corpus

capital post-conviction litigation

criminal procedure

constitutional law

ineffective assistance of counsel

evidence

QUESTIONS PRESENTED

1. Whether the post-trial destruction of trial exhibits violated due process and entitled Lovitt to state habeas relief.
2. Whether the Commonwealth violated Brady by failing to disclose the medical examiner's initial opinion concerning scissors and information about witness Casel Lucas's prior cooperation and alleged inconsistent statements.
3. Whether trial counsel provided ineffective assistance during the guilt phase by failing to pursue additional testing, further investigate the alleged murder weapon and Lucas, or request a special jailhouse-informant credibility instruction.
4. Whether trial counsel provided ineffective assistance during the penalty phase by failing to investigate and present additional family and social-history mitigation evidence.
5. Whether Lovitt's actual-innocence claim could be considered in this state habeas proceeding.

HOLDINGS

1. Assuming without deciding that a habeas petitioner may assert a due process challenge to post-trial destruction of evidence and that Youngblood applies, the destruction did not violate due process because Lovitt failed to establish bad faith by a state agent.
2. Noncompliance with Code §§ 19.2-270.4 and 19.2-270.4:1 did not provide a basis for habeas or appellate relief because Code § 19.2-270.4:1(E) expressly excludes such noncompliance as a basis for relief.
3. The Commonwealth did not violate Brady by failing to disclose the medical examiner's initial opinion concerning two pairs of scissors examined at the autopsy because those scissors were not the trial exhibit or alleged murder weapon, and the medical examiner later changed or qualified her opinion.
4. The Commonwealth was required to disclose that Lucas received a benefit for cooperating in the Evans prosecution, but the nondisclosure did not violate Brady because defense counsel learned the information before trial and used it to impeach Lucas. Lucas's cooperation in cases for which he received no benefit was not impeachment evidence requiring disclosure, and the alleged inconsistent statements were not proven.
5. Lovitt failed to prove ineffective assistance during the guilt phase because counsel's investigation and strategic decisions concerning the scissors, DNA testing, Lucas, and witness instructions were objectively reasonable.

6. Lovitt failed to show prejudice from counsel's failure to investigate and present additional family and social-history mitigation evidence because the totality of the available mitigation evidence did not create a reasonable probability of a different sentence.
7. The court did not consider Lovitt's actual-innocence claim because actual innocence is outside the scope of habeas corpus review, which concerns the legality of the petitioner's detention.

KEY QUOTATIONS

“Therefore, for purposes of this petition only, we will assume, without deciding, that a habeas petitioner may assert a due process claim regarding the post-trial destruction of evidence, and that the Youngblood standard governing pre-trial destruction of evidence also applies to a due process claim involving evidence destroyed post-trial.” (815)

“Thus, we hold that Lovitt has failed to advance any valid basis for habeas corpus relief arising from the destruction of the trial exhibits in his case.” (817)

“Thus, we hold that Lovitt's Brady claim is without merit.” (819)

“In short, the record before us does not undermine confidence in the outcome of the proceedings.” (826)

FACTUAL BACKGROUND

Lovitt was convicted of killing Clayton Dicks during a robbery at a pool hall and received a death sentence for capital murder. After his direct appeal was affirmed, nearly all trial exhibits, including potentially relevant biological evidence, were destroyed pursuant to a circuit-court order before Lovitt's habeas proceedings were completed. Lovitt alleged that the destruction impaired further DNA testing, that the Commonwealth suppressed exculpatory and impeachment evidence, and that trial counsel were ineffective in investigating the evidence and presenting mitigation. The evidentiary record showed no bad-faith destruction, that counsel pursued a deliberate defense strategy, and that the undisclosed impeachment information had already been discovered and used at trial.

PROCEDURAL HISTORY

A jury convicted Lovitt of capital murder and robbery and imposed death and life imprisonment, respectively. The Supreme Court of Virginia affirmed the convictions and sentences, and the United States Supreme Court denied certiorari. After trial exhibits were destroyed, Lovitt filed a state habeas petition alleging due process violations, Brady violations, ineffective assistance of counsel, and actual innocence. Following an evidentiary hearing ordered by the Supreme Court of Virginia, the court rejected the claims and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Lovitt v. Commonwealth, 260 Va. 497, 537 S.E.2d 866 (2000), cert. denied, 534 U.S. 815 (2001)

- Arizona v. Youngblood, 488 U.S. 51 (1988)
- California v. Trombetta, 467 U.S. 479 (1984)
- Thomas v. Commonwealth, 244 Va. 1, 419 S.E.2d 606 (1992)
- Holdren v. Legursky, 16 F.3d 57 (4th Cir. 1994)
- Brady v. Maryland, 373 U.S. 83 (1963)
- Strickler v. Greene, 527 U.S. 263 (1999)
- Kyles v. Whitley, 514 U.S. 419 (1995)
- United States v. Bagley, 473 U.S. 667 (1985)
- Giglio v. United States, 405 U.S. 150 (1972)
- Collier v. Davis, 301 F.3d 843 (7th Cir. 2002), cert. denied, 537 U.S. 1208 (2003)
- Knox v. Johnson, 224 F.3d 470 (5th Cir. 2000), cert. denied, 532 U.S. 975 (2001)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Williams v. Taylor, 529 U.S. 362 (2000)
- Burger v. Kemp, 483 U.S. 776 (1987)
- Darden v. Wainwright, 477 U.S. 168 (1986)
- Virginia Parole Board v. Wilkins, 255 Va. 419, 498 S.E.2d 695 (1998)
- McClenny v. Murray, 246 Va. 132, 431 S.E.2d 330 (1993)
- Smyth v. Holland, 199 Va. 92, 97 S.E.2d 745 (1957)

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