

SUPREME COURT OF ARKANSAS

Millsap v. Kelley

2016 Ark. 324 (2016) · No. CV-16-404 · Decided September 22, 2016

SUMMARY

The Arkansas Supreme Court affirmed the dismissal of Lee Charles Millsap Jr.'s petition for a writ of habeas corpus. Millsap argued that his life-without-parole sentence for capital murder was facially invalid because the death penalty had been waived. The court held that the applicable statutes could be read in harmony and that life imprisonment without parole was a permissible sentence.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	September 22, 2016
DOCKET	CV-16-404
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of a petition for writ of habeas corpus by the Lincoln County Circuit Court.
STANDARD OF REVIEW	A grant or denial of habeas relief is not reversed unless the circuit court's findings are clearly erroneous. Statutory interpretation is reviewed de novo, without deference to the circuit court's interpretation.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Lee Charles Millsap, Jr. v. Wendy Kelley, Director, Arkansas Department of Correction

TOPICS

- habeas corpus
- post-conviction relief
- statutory interpretation
- appellate procedure
- sentencing

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- habeas corpus
- statutory interpretation

QUESTIONS PRESENTED

1. Whether Millsap's life-without-parole sentence for capital murder was facially invalid because the death penalty had been waived and Arkansas Code Annotated section 16-89-108(b) states that punishment cannot be fixed at more than life imprisonment.
2. Whether Millsap established probable cause to believe that he was illegally detained and was therefore entitled to habeas relief.

HOLDINGS

1. A life-without-parole sentence is within the statutory range for capital murder even when the death penalty has been waived; section 16-89-108(b) does not prohibit imposition of the only permissible alternative sentence under section 5-10-101.
2. Millsap was not entitled to habeas relief because he failed to establish that the judgment was facially invalid or that the trial court lacked jurisdiction, and therefore failed to show probable cause that he was illegally detained.

KEY QUOTATIONS

“A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the cause.” (at 2)

“In construing any statute, we place it beside other statutes relevant to the subject matter in question and ascribe meaning and effect to be derived from the whole.” (at 3)

“Statutes relating to the same subject must be construed together and in harmony, if possible.” (at 3)

FACTUAL BACKGROUND

In 1998, Millsap entered negotiated guilty pleas in the Pulaski County Circuit Court to capital murder, first-degree terroristic threatening, and second-degree battery. He received life imprisonment without parole for capital murder, and the death penalty was waived. In his habeas petition, he argued that Arkansas Code Annotated section 16-89-108(b), which provides that punishment cannot exceed life imprisonment when the death penalty is waived, made his sentence facially invalid.

PROCEDURAL HISTORY

Millsap filed a pro se petition for a writ of habeas corpus in the Lincoln County Circuit Court, where he was incarcerated. The circuit court dismissed the petition, concluding that his life-without-parole sentence for capital murder was within the statutory range and that he had not shown probable cause for issuance of the writ. The Arkansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Philyaw v. Kelley, 2015 Ark. 465, 477 S.W.3d 503
- Fields v. Hobbs, 2013 Ark. 416
- Hobbs v. Gordon, 2014 Ark. 225, 434 S.W.3d 364
- State v. Thomas, 2014 Ark. 362, 439 S.W.3d 690
- Butler v. State, 261 Ark. 369, 549 S.W.2d 65 (1977)
- State v. Colvin, 2013 Ark. 203, 427 S.W.3d 635

OPINION

PER CURIAM.

Cite as 2016 Ark. 324 SUPREME COURT OF ARKANSAS No. CV-16-404 Opinion Delivered: September 22, 2016 LEE CHARLES MILLSAP, JR. APPELLANT PRO SE APPEAL FROM THE V. LINCOLN COUNTY CIRCUIT COURT WENDY KELLEY, DIRECTOR, [NO. 40CV-15-106] ARKANSAS DEPARTMENT OF CORRECTION APPELLEE HONORABLE JODI RAINES DENNIS, JUDGE AFFIRMED. PER CURIAM Appellant Lee Charles Millsap, Jr., filed a pro se petition for writ of habeas corpus in the circuit court of the county where he was incarcerated.¹ The circuit court dismissed the petition, and Millsap lodged this appeal.

On appeal, Millsap contends that the circuit court erred in dismissing the petition because it failed to grant relief on his claim in the habeas petition that a judgment of commitment sentencing Millsap to “life without parole” on a capital-murder charge was facially invalid.

We affirm the order dismissing the petition. In 1998, Millsap entered negotiated guilty pleas in the Pulaski County Circuit Court to charges of capital murder, first-degree terroristic threatening, and second-degree battery.

The judgment Millsap attached to the habeas petition reflects that Millsap received a sentence of life without parole on the capital-murder charge. Millsap also attached to his petition a copy of the docket listing for the trial court, which indicates that the death penalty ¹ As of the date of this opinion, Millsap remains incarcerated in Lincoln County. Cite as 2016 Ark.

324 was waived. Millsap does not contest the judgment concerning the other charges, but he contends, both in the petition and on appeal, that the trial court did not have authority under the applicable statutes to enter a sentence of life without parole for the capital-murder charge. A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the cause.

Philyaw v. Kelley, 2015 Ark. 465, 477 S.W.3d 503. Under our statute, unless a petitioner for the writ alleges his actual innocence and proceeds under Act 1780 of 2001 Acts of Arkansas, he is required to plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial

court and make a showing by affidavit or other evidence of probable cause to believe that he is illegally detained.

Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). A petitioner in proceedings for a writ of habeas corpus must show that the trial court lacked jurisdiction or that the commitment was invalid on its face, or there is no basis for a finding that a writ of habeas corpus should issue. *Fields v. Hobbs*, 2013 Ark. 416. Millsap alleged that the judgment was illegal on its face, and he contends that he has shown probable cause for a finding of illegal detention because he has shown that the trial court lost jurisdiction to impose the sentence when the State waived the death penalty.

Arkansas Code Annotated section 16-89-108(b) (Repl. 2005) states that, in those cases where the death penalty has been waived, “punishment cannot be fixed at more than life imprisonment.” Millsap asserts that the imposition of the sentence that he received, life without parole, was barred by this statutory requirement. Millsap contends that, because he can only be sentenced under that statute to life, his conviction must be void.

Millsap alleges 2 Cite as 2016 Ark. 324 the sentence may not be reduced to a “life” sentence because, under Arkansas Code Annotated section 5-10-101 (Repl. 1997), the only two possible sentences for a conviction of capital murder are death or life imprisonment without parole. Millsap argues that this conflict in statutory intent must be resolved in his favor, and that the sentence imposed was in excess of that permitted.

The circuit court considering the habeas petition found that Millsap’s sentence was within the statutory range for capital murder and that Millsap failed to demonstrate probable cause for issuance of the writ. A circuit court’s grant or denial of habeas relief will not be reversed unless the court’s findings are clearly erroneous. *Hobbs v. Gordon*, 2014 Ark.

225, 434 S.W.3d 364. A finding is clearly erroneous when, although there is evidence to support it, the appellate court is left, after reviewing the entire evidence, with the definite and firm conviction that a mistake has been committed. *Id.* On appeal, however, we consider any statutory interpretation *de novo* and give no deference to the circuit court’s interpretation.

State v. Thomas, 2014 Ark. 362, 439 S.W.3d 690. In this case, the circuit court’s order was not clearly erroneous, and, following clear precedent, its statutory interpretation was also correct. As the circuit court noted in its order, this court has considered this issue and rejected Millsap’s argument.

In *Butler v. State*, 261 Ark. 369, 549 S.W.2d 65 (1977), we noted that the intermediate punishment of life imprisonment without parole did not exist when the act codified by section 16-89-108 was passed. In construing any statute, we place it beside other statutes relevant to the subject matter in question and ascribe meaning and effect to 3 Cite as 2016 Ark.

324 be derived from the whole. Thomas, 2014 Ark. 362, at 4, 439 S.W.3d at 692. Statutes relating to the same subject must be construed together and in harmony, if possible. Id. It is true that penal statutes are to be strictly construed, and all doubts are to be resolved in favor of the defendant. State v. Colvin, 2013 Ark. 203, 427 S.W.3d 635. Even a penal statute, however, must not be construed so strictly as to defeat the obvious intent of the legislature.

Id. As we concluded in Butler, the two statutes here can be read in harmony. The legislature's intent in section 16-89-108(b) was clearly that, once waived, the waiver could not be disregarded and the death penalty imposed. It was not, as Millsap contends, the legislature's intent to prohibit any imposition of the only permissible alternative sentence under section 5-10-101, life imprisonment without parole.

Accordingly, the circuit court did not err in declining to grant relief on the claim in the habeas petition. Affirmed. 4