

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Richard Booth, Jr. v. Karen Pszczolkowski

No. 19-1191 (W. Va. June 23, 2021) · No. No. 19-1191; Ohio County 18-C-184 · Decided June 23, 2021

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the denial of Richard Booth, Jr.'s third petition for a writ of habeas corpus. The court rejected claims concerning ineffective assistance of counsel, diminished capacity, competency, expert funding, the absence of an omnibus hearing, and disproportionate sentencing. The court concluded that many claims were waived or previously adjudicated and that the remaining claims lacked merit.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	June 23, 2021
DOCKET	No. 19-1191; Ohio County 18-C-184
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Ohio County's order denying his third petition for a writ of habeas corpus.
STANDARD OF REVIEW	The final order and ultimate disposition in a habeas action are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo. Sentencing orders are reviewed under a deferential abuse-of-discretion standard unless they violate statutory or constitutional commands.
PRECEDENTIAL VALUE	published memorandum decision
PARTIES	Richard Booth, Jr. v. Karen Pszczolkowski, Superintendent, Northern Correctional Facility

TOPICS

state post-conviction relief

successive petitions

ineffective assistance

plea bargaining

sentencing

PRACTICE AREAS

criminal law

post-conviction habeas corpus

ineffective assistance of counsel

sentencing

QUESTIONS PRESENTED

1. Whether the circuit court erred by denying funding for an expert concerning Booth's alleged diminished capacity.
2. Whether the circuit court erred by denying Booth's ineffective-assistance claims without conducting an omnibus habeas hearing.
3. Whether Booth's eighty-year sentence was unconstitutionally disproportionate in light of a codefendant's modified sentence.

HOLDINGS

1. The circuit court did not err in impliedly denying funding for an expert because Booth waived the opportunity to present voluntary-intoxication and diminished-capacity defenses by pleading guilty and failed to show that expert assistance was necessary to establish habeas relief.
2. The circuit court did not err by denying the ineffective-assistance claims without conducting an omnibus hearing because a habeas court may deny a petition without a hearing or appointed counsel when the filings show that the petitioner is entitled to no relief.
3. Booth failed to establish that his sentence was unconstitutionally disproportionate because he did not show that he and the codefendant were similarly situated, and the Court's prior decision had already determined that his sentence was not disproportionate.

KEY QUOTATIONS

"The diminished capacity defense is available in West Virginia to permit a defendant to introduce expert testimony regarding a mental disease or defect that rendered the defendant incapable, at the time the crime was committed, of forming a mental state that is an element of the crime charged." (at 4)

"A court having jurisdiction over habeas corpus proceedings may deny a petition for a writ of habeas corpus without a hearing and without appointing counsel for the petitioner if the petition, exhibits, affidavits or other documentary evidence filed therewith show to such court's satisfaction that the petitioner is entitled to no relief." (at 6)

"Disparate sentences for codefendants are not per se unconstitutional." (at 8)

FACTUAL BACKGROUND

Booth was arrested after an attempted purse-snatching and later pleaded guilty to first-degree robbery under an agreement limiting the State's sentencing recommendation and precluding a recidivist filing. During the plea colloquy, he acknowledged understanding his rights, the consequences of the plea, and his satisfaction with counsel. He later alleged that counsel should have pursued defenses based on intoxication, diminished capacity, competency, criminal responsibility, and the victim's injuries, and argued that his sentence was disproportionate to that of a codefendant.

PROCEDURAL HISTORY

Booth pleaded guilty to first-degree robbery in 2007 and received an eighty-year sentence. The Supreme Court of Appeals affirmed his sentence on direct appeal, and the United States Supreme Court denied certiorari. His first habeas petition resulted in a partial affirmance and remand for findings on certain claims; his second habeas petition alleging ineffective assistance was denied without appeal. The circuit court denied his third habeas petition, concluding that several claims were barred by res judicata or waiver and that the remaining ineffective-assistance claims lacked merit. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Booth, 224 W. Va. 307, 685 S.E.2d 701 (2009)
- Booth v. West Virginia, 130 S. Ct. 2365 (2010)
- Booth v. Ballard, No. 11-0085, 2012 WL 3002530 (W. Va. June 8, 2012)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Anstey v. Ballard, 237 W. Va. 411, 787 S.E.2d 864 (2016)
- Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981)
- White v. Haines, 215 W. Va. 698, 601 S.E.2d 18 (2004)
- Perdue v. Coiner, 156 W. Va. 467, 194 S.E.2d 657 (1973)
- State v. Joseph, 214 W. Va. 525, 590 S.E.2d 718 (2003)
- State v. Simmons, 172 W. Va. 590, 309 S.E.2d 89 (1983)
- Tamburo v. Pszczolkoski, No. 14-0287, 2015 WL 3751825 (W. Va. June 15, 2015)
- State v. Skidmore, 228 W. Va. 166, 718 S.E.2d 516 (2011)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State ex rel. Daniel v. Legursky, 195 W. Va. 314, 465 S.E.2d 416 (1995)
- State ex rel. Vernatter v. Warden, 207 W. Va. 11, 528 S.E.2d 207 (1999)
- State ex rel. Farmer v. Trent, 206 W. Va. 231, 523 S.E.2d 547 (1999)
- State v. Buck, 173 W. Va. 243, 314 S.E.2d 406 (1984)
- State v. Lucas, 201 W. Va. 271, 496 S.E.2d 221 (1997)
- State v. Georgius, 225 W. Va. 716, 696 S.E.2d 18 (2010)
- State v. Varlas, 243 W. Va. 447, 844 S.E.2d 688 (2020)