

SUPREME COURT OF VERMONT

In re Michael Lewis

2021 VT 24 · No. 2019-322 · Decided April 30, 2021

SUMMARY

The Vermont Supreme Court affirmed summary judgment denying Michael Lewis's petition for post-conviction relief from his 2009 convictions and habitual-offender sentence enhancement. The Court held that Lewis waived a collateral challenge to a 2005 predicate conviction by pleading guilty to the habitual-offender enhancement, that the absence of express verbal pleas to three 2009 charges did not invalidate those convictions under the totality of the circumstances, and that the PCR court properly declined to address ineffective-assistance claims omitted from the amended pleadings.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Robinson, J.; Reiber, C.J.; Eaton, J.; Carroll, J.; Cohen, J.
JURISDICTION	Vermont
DECIDED	April 30, 2021
DOCKET	2019-322
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court, Chittenden Unit, Civil Division, denying Michael Lewis's petition for post-conviction relief on summary judgment.
STANDARD OF REVIEW	The court reviewed the summary-judgment decision without deference, applying the same standard as the trial court. It reviewed denial of relief under Vermont Rule of Civil Procedure 60(b)(6) for abuse of discretion.
PRECEDENTIAL VALUE	Published and precedential Vermont Supreme Court opinion.
PARTIES	Michael Lewis v. State of Vermont

TOPICS

[post-conviction relief](#)[sentencing](#)[plea bargaining](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Lewis waived a collateral challenge to the 2005 false-pretenses conviction when he pleaded guilty to the 2009 habitual-offender enhancement supported in part by that conviction.
2. Whether the failure to elicit an express verbal guilty plea to three charges during the 2009 plea colloquy invalidated the resulting convictions.
3. Whether the PCR court abused its discretion by declining to address ineffective-assistance-of-counsel claims omitted from the operative amended petition or raised for the first time in a motion to reopen judgment.

HOLDINGS

1. A defendant who knowingly and voluntarily pleads guilty to a habitual-offender enhancement based in part on a predicate conviction waives a collateral challenge to the use of that predicate conviction to support the enhancement, absent a properly preserved challenge.
2. Although an express verbal guilty plea to each count is strongly preferred, failure to elicit one does not invalidate a conviction when the totality of the circumstances clearly establishes that the defendant knowingly, intelligently, and voluntarily intended to plead guilty and that the court accepted the plea.
3. A PCR court does not abuse its discretion by declining to adjudicate ineffective-assistance claims that were omitted from the operative amended petition or raised for the first time in a motion to reopen the final judgment.

KEY QUOTATIONS

“Although a verbal plea of “guilty” on the record is generally an important component of a knowing and voluntary guilty plea, it is not essential if the circumstances compel the conclusion that the defendant pled guilty to the charge and the court accepted it.” (¶ 12)

“The trial court acted well within its discretion in declining to address any ineffective assistance of counsel claims.” (¶ 26)

FACTUAL BACKGROUND

In 2009, Lewis pleaded guilty under a written plea agreement to two counts of manslaughter, five counts of grossly negligent operation resulting in serious bodily injury, and a habitual-offender enhancement. The enhancement relied on prior felony convictions, including a 2005 false-pretenses conviction. During the 2009 plea colloquy, the court expressly elicited guilty pleas to four charges but did not separately ask Lewis how he pleaded to three grossly negligent-operation charges; Lewis nevertheless acknowledged the factual allegations and the court accepted his plea to all seven charges. Lewis later sought post-conviction relief, challenging the 2005 predicate conviction, the three 2009 convictions, and ineffective-assistance claims.

PROCEDURAL HISTORY

Lewis was convicted in 2009 of two counts of involuntary manslaughter and multiple counts of grossly negligent operation of a vehicle resulting in death or serious bodily injury, and received a habitual-offender sentence enhancement based on four prior felonies. He filed a pro se post-conviction-relief petition in 2017 and later filed amended petitions challenging predicate convictions, three 2009 convictions, and various ineffective-assistance claims. The PCR court granted the State summary judgment on the claims properly pleaded, granted Lewis relief concerning the 2008 escape conviction, and remanded that docket to the criminal division; it declined to address ineffective-assistance claims not included in the operative amended petition. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Gay, 2019 VT 67, ¶¶ 7, 12-13, 211 Vt. 122, 220 A.3d 769
- In re Benoit, 2020 VT 58, ¶¶ 16, 18, 237 A.3d 1243
- State v. Hance, 157 Vt. 222, 224, 596 A.2d 365, 366 (1991)
- In re Torres, 2004 VT 66, ¶ 9, 177 Vt. 507, 861 A.2d 1055 (mem.)
- State v. Armstrong, 148 Vt. 344, 345-46, 533 A.2d 1183, 1184 (1987)
- State v. Phillips, 2018 VT 85, ¶ 14 n.7, 208 Vt. 145, 195 A.3d 1099
- In re Parks, 2008 VT 65, ¶ 17, 184 Vt. 110, 956 A.2d 545
- Tollett v. Henderson, 411 U.S. 258, 267 (1973)
- In re Hall, 143 Vt. 590, 594, 469 A.2d 756, 758 (1983)
- Boykin v. Alabama, 395 U.S. 238, 243-44 (1969)
- In re Stocks, 2014 VT 27, ¶ 14, 196 Vt. 160, 94 A.3d 1143
- United States v. Grandia, 18 F.3d 184, 187 (2d Cir. 1994)
- Commonwealth v. Tavernier, 922 N.E.2d 166, 173 (Mass. App. Ct. 2010)
- State v. Holden, 32 So. 3d 803, 804 (La. 2010) (per curiam)
- State v. Yancey, 2019-NMSC-018, ¶ 13, 451 P.3d 561
- Penland v. Warren, 2018 VT 70, ¶ 6, 208 Vt. 15, 194 A.3d 755
- Fawzy v. Wauquiez Boats SNC, 873 F.3d 451, 455 (4th Cir. 2017)
- In re Carpenter, 2018 VT 91, ¶ 11, 208 Vt. 291, 197 A.3d 865