

SUPREME COURT OF NORTH DAKOTA

Steen v. State

2013 ND 67 · No. Nos. 20120398-20120402 · Decided May 14, 2013

SUMMARY

The North Dakota Supreme Court affirmed the summary dismissal of Duane Steen’s application for post-conviction relief concerning probation revocation and convictions entered upon pleas. The court held that Steen failed to provide evidence of prejudice from alleged ineffective assistance of counsel or to establish disputed material facts supporting his other claims.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, C.J.; Carol Ronning Kapsner; Mary Muehlen Maring; Daniel J. Crothers; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	May 14, 2013
DOCKET	Nos. 20120398-20120402
DISPOSITION	affirmed
PROCEDURAL POSTURE	Steen appealed the district court's summary dismissal of his application for post-conviction relief concerning the revocation of probation for a 2002 conviction and convictions entered upon pleas in 2008.
STANDARD OF REVIEW	The court reviewed whether Steen's application and affidavits raised material issues of fact requiring an evidentiary hearing and applied the summary-disposition standard. For ineffective assistance, the court focused on whether Steen demonstrated prejudice.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Duane Steen v. State of North Dakota

TOPICS

- state post-conviction relief
- ineffective assistance
- standard of review
- appellate procedure
- criminal procedure

PRACTICE AREAS

post-conviction relief

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Steen's application and affidavits raised material issues of fact requiring an evidentiary hearing on ineffective assistance of counsel.
2. Whether Steen provided evidentiary support establishing prejudice from counsel's alleged errors in the probation-revocation and plea proceedings.
3. Whether Steen provided proof of disputed material facts supporting his other post-conviction claims.

HOLDINGS

1. An applicant for post-conviction relief is not entitled to an evidentiary hearing on ineffective assistance of counsel without proof of prejudice, and Steen failed to provide such proof.
2. A party opposing summary disposition may not rely solely on pleadings and must present evidentiary support showing disputed material facts; Steen failed to do so for his remaining claims.

FACTUAL BACKGROUND

Steen sought post-conviction relief from the revocation of probation imposed for a 2002 conviction and from 2008 convictions entered after pleas, including an Alford plea. He asserted entitlement to sentence credit, violations of plea agreements and due process, an invalid plea, ineffective assistance of counsel, lack of waiver of a habitual-offender hearing, and lack of waiver of a presentence investigation. On appeal, he principally argued that his application and affidavits sufficiently raised material factual disputes regarding ineffective assistance, but he offered no proof of prejudice.

PROCEDURAL HISTORY

The District Court of Williams County summarily dismissed Steen's application for post-conviction relief after the State moved for summary disposition. The district court rejected or dismissed his claims concerning sentence credit, alleged violations of plea agreements and due process, the validity of his Alford plea, ineffective assistance of counsel, habitual-offender hearing rights, and the need for a presentence investigation. The North Dakota Supreme Court affirmed, concluding that Steen failed to provide proof of prejudice or disputed material facts warranting an evidentiary hearing.

DISPOSITION

affirmed

CASES CITED

- North Carolina v. Alford, 400 U.S. 25 (1970)
- State v. Steen, 2009 ND 30, ¶ 1, 767 N.W.2d 530
- State v. Cain, 2011 ND 213, ¶ 17, 806 N.W.2d 597

- Heckelsmiller v. State, 2004 ND 191, ¶ 4, 687 N.W.2d 454
- State v. Bender, 1998 ND 72, ¶ 22, 576 N.W.2d 210

OPINION

PER CURIAM.

Filed 5/14/13 by Clerk of Supreme Court IN THE SUPREME COURT STATE OF NORTH DAKOTA 2013 ND 67 Duane Steen, Petitioner and Appellant v. State of North Dakota, Respondent and Appellee Nos. 20120398-20120402 Appeal from the District Court of Williams County, Northwest Judicial District, the Honorable Douglas L. Mattson, Judge. AFFIRMED. Per Curiam. Mark T. Blumer, P.O.

Box 7340, Fargo, N.D. 58106, for petitioner and appellant; submitted on brief. Nathan K. Madden, Assistant State's Attorney, P.O. Box 2047, Williston, N.D. 58802, for respondent and appellee. Steen v. State Nos. 20120398-20120402 Per Curiam. [¶1] Duane Steen appealed from an order summarily dismissing his application for post-conviction relief from the revocation of his probation for a 2002 conviction and from 2008 convictions entered upon pleas.

Steen's application for post-conviction relief generally claimed: (1) he was entitled to credit for time served on his sentence for the 2002 conviction; (2) the State violated his plea agreements and his due process rights; (3) his plea under North Carolina v. Alford, 400 U.S. 25 (1970) was invalid; (4) he received ineffective assistance of counsel; (5) he did not waive a hearing on his status as a habitual offender; and (6) he did not waive a pre-sentence investigation.

After the State moved for summary disposition, the district court decided: (1) Steen's claim for credit for time served was res judicata under State v. Steen, 2009 ND 30, ¶ 1, 767 N.W.2d 530; (2) the transcript for a 2008 hearing demonstrated Steen had no basis to withdraw his Alford plea; (3) his claim for a separate hearing on his status as a habitual offender was without merit under State v. Cain, 2011 ND 213, ¶ 17, 806 N.W.2d 597; (4) the sentencing court was not required to obtain a pre-sentence report under N.D.C.C. § 12.1-32-09(5); and (5) he did not show he was prejudiced by counsels' claimed ineffectiveness. [¶2] On appeal, Steen claims his application for post-conviction relief and his affidavits were sufficient to raise material issues of fact and warrant an evidentiary hearing on his claim for ineffective assistance of counsel.

We conclude Steen failed to provide any proof of prejudice in the context of the revocation and plea proceeding. See Heckelsmiller v. State, 2004 ND 191, ¶ 4, 687 N.W.2d 454 (stating prejudice prong of ineffective assistance of counsel claim requires defendant to establish reasonable probability that, but for counsel's claimed errors, the result of proceeding would have been different, and if it is easier to dispose of ineffectiveness claim on ground of lack of prejudice, that course should be followed).

To the extent Steen raises other claims on appeal, he failed to provide any proof of disputed issues of material fact for those claims. See *State v. Bender*, 1998 ND 72, ¶ 22, 576 N.W.2d 210 (party opposing motion for summary disposition may not rely upon pleadings, but must present evidentiary support in response to motion).

We affirm under N.D.R.App.P. 35.1(a)(6). [¶3] Gerald W. VandeWalle, C.J. Carol Ronning Kapsner Mary Muehlen Maring Daniel J. Crothers Dale V. Sandstrom