

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Ademus Saechao v. Cheryl Eplett

No. No. 20-1356, United States Court of Appeals for the Seventh Circuit (March 16, 2021)

SUMMARY

In this §2254 habeas case, the Seventh Circuit held that a state trial court's disqualification of the petitioner's retained counsel due to a potential conflict of interest was not an unreasonable application of *Wheat v. United States*, 486 U.S. 153 (1988). The court emphasized that the state judiciary's decision was entitled to double deference under AEDPA, particularly where a co-defendant appeared on the prosecution's witness list and had refused a general conflict waiver, creating a serious risk that counsel would have to cross-examine a former client using confidential information. The Seventh Circuit also clarified that its own precedent in *United States v. Turner*, 594 F.3d 946 (7th Cir. 2010), does not constitute "clearly established Federal law, as determined by the Supreme Court" for purposes of §2254(d)(1), and thus cannot override the discretion afforded to state courts. Key topics: Sixth Amendment right to counsel, conflict of interest, disqualification of retained counsel, AEDPA deference, and *Wheat* standard.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Easterbrook; Ripple; Rovner
JURISDICTION	Federal
DECIDED	March 16, 2021
DOCKET	No. 20-1356
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Western District of Wisconsin. No. 17-cv-370-slc — Stephen L. Crocker, Magistrate Judge.
STANDARD OF REVIEW	28 U.S.C. §2254(d)(1) - The state court's decision must be contrary to or involve an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States.
PRECEDENTIAL VALUE	Published
PARTIES	Ademus Akadeameuer Saechao v. Cheryl Eplett, Warden, Oakhill Correctional Institution

TOPICS

criminal procedure

habeas corpus

sixth amendment

right to counsel

standard of review

appellate jurisdiction

PRACTICE AREAS

Criminal Law

Habeas Corpus

Constitutional Law

QUESTIONS PRESENTED

1. Whether the state court unreasonably applied clearly established federal law as determined by the Supreme Court in *Wheat v. United States* when it disqualified Saechao's chosen counsel based on the risk of conflict of interest.

HOLDINGS

1. The state court's decision to disqualify counsel based on the risk of conflict was not an unreasonable application of *Wheat*, given that Alonso-Bermudez was a potential witness and refused a comprehensive waiver.

KEY QUOTATIONS

"A state court's decision addressing the merits of a legal claim, as Wisconsin's judiciary did, cannot be upset on collateral review unless the adjudication 'resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.'" (at 3)

"Perhaps more important, Turner just doesn't matter on collateral review under §2254(d)(1), which says that the writ must not issue unless the state court's decision is contrary to 'clearly established Federal law, as determined by the Supreme Court of the United States' (emphasis added). This means that decisions by the federal courts of appeals do not count, except to the extent that they illuminate the meaning of the Supreme Court's decisions." (at 5-6)

FACTUAL BACKGROUND

Saechao was charged in Wisconsin state court with armed robbery, false imprisonment, and related offenses. He retained attorney Jay Kronenweiter. The state also charged Alonso-Bermudez, Rohmeyer, and Schulte with participating in the same crimes. The public defender's office appointed Kronenweiter to represent Alonso-Bermudez without knowing he already represented Saechao. This created a potential conflict of interest. Kronenweiter expressed concern and withdrew as Alonso-Bermudez's counsel after six weeks, but the trial judge wanted an unconditional waiver from both defendants. Saechao waived, but Alonso-Bermudez refused to sign a general waiver. The trial judge disqualified Kronenweiter, and Saechao went to trial with a new lawyer and was convicted.

PROCEDURAL HISTORY

Saechao was convicted in Wisconsin state court after his retained counsel was disqualified due to a conflict of interest. The Wisconsin Court of Appeals affirmed the conviction. Saechao then filed a petition for a writ of habeas corpus under 28 U.S.C. §2254 in the United States District Court for the Western District of Wisconsin, which denied the petition. Saechao appealed to the Seventh Circuit.

DISPOSITION

affirmed

CASES CITED

- Wheat v. United States, 486 U.S. 153 (1988)
- Yarborough v. Alvarado, 541 U.S. 652 (2004)
- Kernan v. Cuero, 138 S. Ct. 4 (2017)
- Parker v. Matthews, 567 U.S. 37 (2012)
- Fayemi v. Ruskin, 966 F.3d 591 (7th Cir. 2020)
- United States v. Turner, 594 F.3d 946 (7th Cir. 2010)