

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Ray D. Cook v. Karen Pszczolkowski, Superintendent, Northern
Correctional Center

Cook · No. No. 20-0802 · Decided March 31, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Ray D. Cook’s petition for a writ of habeas corpus following his convictions for first-degree murder and brandishing a firearm. The court rejected claims of ineffective assistance of counsel and newly discovered evidence based on a post-trial PTSD diagnosis, concluding that counsel’s decisions were strategic and that the additional mental-health evidence would be cumulative. Justice Wooton dissented, stating that the issue of whether supplemental post-trial expert evidence constitutes newly discovered evidence warranted plenary argument.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Alan D. Moats, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	March 31, 2022
DOCKET	No. 20-0802
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Jefferson County's order denying his petition for a writ of habeas corpus.
STANDARD OF REVIEW	In a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that no substantial question of law was presented and that a memorandum decision was appropriate under Rule 21.
PARTIES	Ray D. Cook v. Karen Pszczolkowski, Superintendent, Northern Correctional Center

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Cook received ineffective assistance of counsel during the guilt phase because counsel allegedly failed to investigate or present evidence concerning his shooting of animals, marksmanship, a purported suicide-hotline call, medication evidence, and counsel's communications with him.
2. Whether a posttrial PTSD diagnosis constituted newly discovered evidence entitling Cook to a new trial.
3. Whether Cook received ineffective assistance of counsel during the mercy phase because counsel allegedly failed to investigate and present character witnesses and other mitigating evidence.

HOLDINGS

1. Cook failed to establish ineffective assistance of trial counsel because the challenged omissions either reflected reasonable strategic decisions, lacked evidentiary support, or were not shown to have prejudiced the outcome.
2. Cook's posttrial PTSD diagnosis did not warrant a new trial because, under the facts of this case, an additional mental-health expert opinion would have been cumulative rather than newly discovered material evidence likely to produce a different result.
3. Cook failed to establish ineffective assistance during the mercy phase because counsel's decision not to call additional witnesses was a reasonable strategic choice, and Cook failed to show a reasonable probability of a different sentencing result.

KEY QUOTATIONS

"We only ask whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue." (5)

"Because a variety of mental health related opinions were presented at trial by both petitioner and the State, under the specific facts of this case, we find that yet another expert opinion would be cumulative evidence, which does not entitle petitioner to a new trial." (7)

FACTUAL BACKGROUND

Cook shot his former girlfriend, Jenny Perrine, multiple times while she was sitting in her car in a West Virginia parking lot. He admitted the shooting in a 911 call, and the defense stipulated that he was the shooter; the trial defense instead focused on diminished capacity based on mental illness and medications. The jury convicted him of first-degree murder and brandishing and did not recommend mercy. In habeas proceedings, Cook alleged ineffective assistance of counsel and asserted that a posttrial PTSD diagnosis constituted newly discovered evidence warranting a new trial.

PROCEDURAL HISTORY

Cook was convicted after a bifurcated jury trial of first-degree murder and brandishing a firearm and was sentenced to life without parole for murder and one year for brandishing. This Court affirmed the convictions in a prior memorandum decision. After an omnibus habeas hearing, the circuit court denied relief, and Cook appealed that denial. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Cook, No. 12-0836, 2014 WL 620478 (W. Va. Feb. 12, 2014)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State ex rel. Vernatter v. Warden, W. Virginia Penitentiary, 207 W. Va. 11, 528 S.E.2d 207 (1999)
- State ex rel. Smith v. Sims, 240 W. Va. 601, 814 S.E.2d 264 (2018)
- State v. Frazier, 162 W. Va. 935, 253 S.E.2d 534 (1979)
- Halstead v. Horton, 38 W. Va. 727, 18 S.E. 953 (1894)