

SUPREME COURT OF GEORGIA

Nelson v. Hall, 275 Ga. 792

573 S.E.2d 42 (2002) · No. No. S02A1598 · Decided November 25, 2002

SUMMARY

The Supreme Court of Georgia held that a habeas court improperly assessed prejudice from ineffective assistance of appellate counsel by focusing on the likely outcome after remand or retrial rather than the outcome of the appeal. Because appellate counsel failed to challenge a jury instruction omitting the bodily-injury element of kidnapping with bodily injury, the court concluded that Nelson established both deficient performance and prejudice. The court reversed the denial of habeas relief.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice
JURISDICTION	Georgia
DECIDED	November 25, 2002
DOCKET	No. S02A1598
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the denial of a state habeas corpus petition alleging ineffective assistance of appellate counsel.
STANDARD OF REVIEW	The court reviewed the legal standard governing prejudice in an ineffective-assistance-of-appellate-counsel claim and whether the habeas court applied the proper analysis.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Calvin Leon Nelson v. Hall

TOPICS

- habeas corpus
- ineffective assistance
- jury instructions
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure

QUESTIONS PRESENTED

1. Whether prejudice from ineffective assistance of appellate counsel must be assessed by asking whether there was a reasonable probability that the outcome of the appeal would have been different, rather than by predicting the result of a remand or retrial.
2. Whether Nelson established ineffective assistance of appellate counsel based on counsel's failure to challenge the omission of the bodily-injury element from the kidnapping jury instruction.

HOLDINGS

1. Prejudice is established by showing a reasonable probability that the outcome of the appeal would have been different; the habeas court may not assess prejudice by focusing on the projected result of a remand, retrial, or resentencing.
2. Nelson satisfied both the deficiency and prejudice prongs of ineffective assistance of appellate counsel because counsel failed to challenge an instruction omitting an essential element and the conviction would have been reversed had the issue been raised.

KEY QUOTATIONS

"In order to establish the prejudice component of an ineffective assistance of appellate counsel claim, the defendant must show "a reasonable probability that the outcome of the appeal would have been different.""
(at 43)

"Thus, the inquiry does not focus on the projected result on remand or retrial, but whether there is a reasonable probability that the result of the appeal would have been different." (at 43)

FACTUAL BACKGROUND

Nelson was convicted of kidnapping with bodily injury after the trial court failed to instruct the jury on the bodily-injury element of that offense. His appellate counsel did not challenge the erroneous instruction on direct appeal. The habeas court determined that counsel's performance was deficient but denied relief because, as a recidivist, Nelson might receive the same sentence after remand or retrial.

PROCEDURAL HISTORY

Nelson was convicted of aggravated assault, kidnapping with bodily injury, and armed robbery. The Court of Appeals reversed the armed robbery conviction and affirmed the other convictions; Nelson later pleaded guilty to robbery by intimidation. He filed a habeas petition challenging appellate counsel's failure to raise the trial court's omission of the bodily-injury element from the kidnapping jury instruction. The habeas court found counsel deficient but denied relief because it assessed prejudice by considering the likely result of a remand or retrial rather than the result of the appeal.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The denial of Nelson's habeas petition was reversed; the opinion does not provide more specific remand instructions.

CASES CITED

- Nelson v. State, 233 Ga. App. 385, 503 S.E.2d 335 (1998)
- Curtis v. State, 275 Ga. 576, 571 S.E.2d 376 (2002)
- Hunter v. State, 228 Ga. App. 846, 493 S.E.2d 44 (1997)
- Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Shorter v. Waters, 275 Ga. 581, 571 S.E.2d 373 (2002)
- Sloan v. Sanders, 271 Ga. 299, 519 S.E.2d 219 (1999)
- Battles v. Chapman, 269 Ga. 702, 506 S.E.2d 838 (1998)
- Matire v. Wainwright, 811 F.2d 1430 (11th Cir. 1987)
- Lockhart v. McCotter, 782 F.2d 1275 (5th Cir. 1986)
- Stanford v. Stewart, 274 Ga. 468, 554 S.E.2d 480 (2001)
- Bundren v. State, 247 Ga. 180(2), 274 S.E.2d 455 (1981)