

SUPREME COURT OF GEORGIA

Fortson v. State, 280 Ga. 435

629 S.E.2d 798 (2006) · No. S06A0002 · Decided April 25, 2006

SUMMARY

The Supreme Court of Georgia affirmed Michael Fortson's convictions for felony murder and attempted armed robbery following his retrial. The court rejected his claims of ineffective assistance of counsel and denial of a complete transcript from his first trial, holding that counsel's performance was effective and that the transcript issue was both unpreserved and substantively meritless.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Chief Justice
JURISDICTION	Georgia
DECIDED	April 25, 2006
DOCKET	S06A0002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the denial of a motion for new trial following Fortson's 1997 retrial convictions for felony murder and two counts of attempted armed robbery.
STANDARD OF REVIEW	The evidence was reviewed in the light most favorable to the jury's verdict for sufficiency of the evidence. Ineffective-assistance claims were evaluated under the deficient-performance and prejudice requirements of Strickland; the court could resolve the claim on prejudice without addressing deficient performance. The transcript issue was reviewed for preservation and substantive merit.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Georgia.
PARTIES	Michael Fortson v. The State

TOPICS

- ineffective assistance
- post-conviction relief
- criminal procedure
- preservation of error
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

post-conviction relief

appellate practice

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to investigate adequately, failing to call a witness supporting Fortson's alibi, and requesting a continuance.
2. Whether Fortson was denied a fair trial because he was not provided a complete transcript of his first trial.
3. Whether the evidence was sufficient to support the convictions.

HOLDINGS

1. The evidence was sufficient for a rational trier of fact to find Fortson guilty of felony murder and two counts of attempted armed robbery.
2. Fortson failed to establish prejudice from counsel's failure to call a witness who allegedly was near him but could not identify him.
3. Counsel's decision not to call Fortson's niece was a reasonable strategic decision and did not constitute deficient performance.
4. Fortson failed to show ineffective assistance arising from counsel's request for a continuance.
5. The transcript claim was not preserved for appeal and, in any event, lacked substantive merit.

KEY QUOTATIONS

"Because Fortson received effective representation, and was not denied the full transcript from his first trial, we affirm the convictions." (629 S.E.2d at 799)

"Trial counsel's testimony regarding his reasons for not calling the purported witness establish that the failure to call the witness was a reasonable strategic decision and did not constitute deficient performance." (629 S.E.2d at 800)

FACTUAL BACKGROUND

On May 28, 1983, Fortson and an accomplice approached Stephen Hynes and Catherine Moore outside their Atlanta apartment during an attempted robbery. As Hynes and Moore tried to flee, Moore saw Fortson shoot Hynes. Moore and another witness identified Fortson, and additional physical evidence, including a distinctive baseball hat, linked him to the crime.

PROCEDURAL HISTORY

Fortson was originally convicted in 1983, and the convictions were affirmed by the Supreme Court of Georgia. The Eleventh Circuit later granted habeas relief based on a possible conflict of interest in counsel's representation. After a 1997 retrial, a Fulton County jury again convicted Fortson. The trial court denied his motion for new trial in 2003, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Hamilton v. State, 255 Ga. 468, 339 S.E.2d 707 (1986)
- Hamilton v. Ford, 969 F.2d 1006 (11th Cir. 1992)
- Fortson v. Burden, 87 F.3d 1328 (11th Cir. 1996)
- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Jones v. State, 279 Ga. 854, 855, 622 S.E.2d 1 (2005)
- Riggins v. State, 279 Ga. 407, 409, 614 S.E.2d 70 (2005)
- Billups v. State, 272 Ga. 15(2), 523 S.E.2d 873 (1999)
- Allen v. State, 277 Ga. 711(3), 593 S.E.2d 662 (2004)
- Moore v. Zant, 972 F.2d 318, 319-320 (11th Cir. 1992)
- Pitchess v. Davis, 421 U.S. 482, 490, 95 S. Ct. 1748, 44 L. Ed. 2d 317 (1975)
- Bailey v. State, 273 Ga. 303, 305, 540 S.E.2d 202 (2001)

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