

SUPREME COURT OF LOUISIANA

State ex rel. Williams v. State

224 So. 3d 358 (La. 2017) · Decided August 4, 2017

SUMMARY

The Louisiana Supreme Court denied supervisory relief in a post-conviction proceeding, holding that the relator failed to establish ineffective assistance of trial or appellate counsel under Strickland v. Washington. The court also rejected claims concerning the confrontation right and alleged hearsay, noting that the trial court excluded the challenged testimony and issued a curative instruction. The court concluded that the relator had fully litigated his state post-conviction claims and that the denial was final absent a narrow exception permitting a successive application.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	August 4, 2017
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Relator sought supervisory review of the denial of his application for state post-conviction relief by the Twenty-Fourth Judicial District Court for Jefferson Parish. The Louisiana Supreme Court denied the writ and adopted the district court's written reasons.
STANDARD OF REVIEW	A post-conviction applicant bears the burden of proving entitlement to relief. Ineffective-assistance claims require proof of deficient performance and resulting prejudice under Strickland v. Washington. Appellate counsel is afforded substantial deference in selecting issues for appeal.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court per curiam decision; precedential.
PARTIES	State ex rel. Williams v. State

TOPICS

- state post-conviction relief
- successive petitions
- ineffective assistance
- sixth amendment
- hearsay

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- constitutional law

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to obtain additional photographs or video of the crime scene or request that the jury view the scene.
2. Whether appellate counsel was ineffective for failing to raise the alleged confrontation-related issue on direct appeal.
3. Whether the admission of the detective's brief hearsay reference violated Williams's rights under the Confrontation Clause or deprived him of a fair trial.
4. Whether Williams remained entitled to further state collateral review after fully litigating his post-conviction application.

HOLDINGS

1. Williams failed to prove that trial counsel performed deficiently or that any alleged deficiency prejudiced the reliability or fairness of the trial.
2. Williams failed to establish ineffective assistance of appellate counsel based on counsel's failure to raise the asserted confrontation issue.
3. Williams failed to establish a Confrontation Clause violation or resulting prejudice because the trial court excluded the challenged hearsay reference and instructed the jury to disregard it.
4. After fully litigating his state post-conviction application, Williams exhausted his right to state collateral review unless he could satisfy a statutory exception authorizing a successive application.

KEY QUOTATIONS

“Denied. Relator fails to show that he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).” (at 358)

“Relator has now fully litigated his application for post-conviction relief in state court.” (at 358)

“The petitioner has not met his heavy burden on his claims.” (at 361)

FACTUAL BACKGROUND

Williams was convicted of a crime arising from a confrontation in the Scottsville neighborhood on April 26, 2009, in which the victim was chased and shot. At trial, witnesses testified about photographs depicting the location, Williams testified regarding his familiarity with the area, and defense counsel cross-examined the witnesses. A detective briefly referred to information underlying an arrest warrant, but the trial court sustained a hearsay objection, instructed the jury to disregard the testimony, and excluded the potential hearsay evidence.

PROCEDURAL HISTORY

The district court denied Williams's post-conviction claims, including ineffective assistance of trial and appellate counsel and a Confrontation Clause claim. The Louisiana Supreme Court denied supervisory relief, concluding that Williams failed to establish ineffective assistance under Strickland, failed to support his remaining claims,

and had fully litigated his state post-conviction application. The court stated that any later successive application would be barred unless a narrow statutory exception applied.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

The district court was ordered to record a minute entry consistent with the per curiam decision.

CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Washington, 491 So. 2d 1337 (La. 1986)
- State v. Legranet, 2002-1462 (La. 12/3/03), 864 So. 2d 89
- State v. Saylor, 93-1042 (La. App. 5 Cir. 4/26/94), 636 So. 2d 1069
- Smith v. Murray, 477 U.S. 527 (1986)
- Jones v. Barnes, 463 U.S. 745 (1983)
- United States v. Phillips, 210 F.3d 345 (5th Cir. 2000)
- Maryland v. Craig, 497 U.S. 836 (1990)

OPINION

PER CURIAM.

ON SUPERVISORY WRITS TO THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON PER CURIAM: | ^Denied. Relator fails to show that he received ineffective assistance of counsel under the standard of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Relator's remaining claims are unsupported. La.C.Cr.P. art. 930.2.

We attach hereto and make a part hereof the district court's written reasons denying relief. Relator has now fully litigated his application for post-conviction relief in state court. Similar to federal habeas relief, see 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8.

Notably, the legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Relator's claims have now been fully litigated in accord with La. C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, relator has exhausted his right to state collateral review.

The district court is ordered to record a minute entry consistent with this per curiam. Attachment *359[[Image here]] *360_k He argues that his attorney should have obtained photographs or video of the location or required the jury to visit the scene. During the trial, the witness, Michael Gordon, who was the petitioner and the deceased, was shown photographs of the areas where the confrontation took place. These photographs, were later introduced into evidence and shown to the jury, Mr. Gordon was carefully cross-examined as to what he witnessed on April 26, 2009.

In addition, the petitioner himself testified, He acknowledged familiarity with this part of the Scottsville neighborhood. Because the jury had the benefit of multiple witnesses explaining the photographs and the unfolding scene, defense counsel was not deficient to failing to produce additional photographs. Furthermore, although the petitioner heard the testimony of Michael Gordon at trial, the petitioner testified that Mr. Gordon made a mistaken identification, not that he was unable to see him attacking the victim.

At the time, of trial, there was no allegation that the confrontation could not be seen from Mr. Gordon's vantage point. This claim is made in the context of an allegation, of ineffective assistance of counsel. ■ Under the well-known standard set out in *Strickland v. Washington* 466 U.S. 668, 104 S.Ct. 2052, 80 L.J. 2d 674 (1984), and *Stott v. Washington*, 491 So.2d 1337 (La. 3 986), a conviction must be reversed if the petitioner proves (1) that counsel's performance fall below an objective standard of reasonableness under prevailing professional standards, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect.

State v. Legrand, 2002-1462 (La.12/3/03), 864 So.2d 89. To be successful in arguing ineffective assistance of counsel, a post-conviction petitioner must prove deficient performance to the point that counsel is not functioning as counsel within the meaning of the Sixth Amendment. A petitioner must also prove actual prejudice to the point that the results of the trial cannot be trusted.

It is, absolutely essential that both prongs of the *Strickland* test be established before relief will be granted by the reviewing court. Furthermore, there is a strong presumption that counsel's performance is within the wide range of effective representation. Significantly, effective counsel does not mean errorless counsel and the reviewing court does not judge counsel's performance with the distorting benefits of hindsight, but rather determines whether counsel was reasonably likely to render effective assistance.

State v. Salsr, 93-1042 (La.App. 5 Cir. 4/26/94), 636 So.2d 1075. In this case, the claim regarding failure to investigate is speculative. It is not established that any different evidence could have been produced. It has not been established that the trial produced an unreliable result. This claim fails to meet the petitioner's heavy burden of proof.

On fee claim feat appellate counsel was ineffective, the petitioner has likewise not met his burden of proof. Specifically, the petitioner alleges that his attorney Premise L, Whits was constitutionally deficient in representing him on appsaiby net raising fee confrontation claim he now asserts.

In reviewing claims of ineffective assistance of counsel on direct appeal, the Supremo Court of fee United States hiss eocptlessly observed'toat appellate counsel 'teed not advance every argument, regardless of merit, urged by tjie defendant ¿Wife v. Lvaey 469 U.S, 387,394 (1985).

The'Court gives great deference to professional appellate strategy and ¾¿½¾! counsel for "winnowing out weaker arguments on appeal and focusing on one central issue if possible, and at most a few key issues. Jones v. JSarnaj, 463 U.S. 745 (1983). This is brie even whore fee weaker arguments have merit Id. at 751-2. When fee claim of ineffective assistance Of appellate counsel is based on Sitae to raise tile issue on appeal, fee prejudice prong of the Strickland test requires fee petitioner to establish that the appellate court would have granted relief; had fee issue been prised.

United States v. Phillips, 210 F.3d 345,350 (5 Cir. 2000). hr fete oase,_foe petitioner ½ unable fo point to an advene reling form fee trial court to support any meritorious appellate argument on te subject Significantly, fee Fifto Circuit Court of Appeal detailed the facts of fee crime at great length, finding the evidence was constitutionally sufficient to comdot, On fete claim, fee petitioner faite to prove ejfeer prong of fe» Stricéfand test He fails to show feat oounsol'a choice to argue sufficiency as toe sote issue on appoaíiwas deficient or below accepted standards, For these reasons, the court finds no merit to petitioner's'dirim of ineffective assistance by trial nr appellate couusbL *361JU.

Claim Three: Denial of his rights to confront witnesses and receive a fair trial la Ms final post-conviotian claim, the petitioner oontiauj's that he suffered a •violation of the confrontation danse of the United States Constitution. Article "VI of the Constitution provides feat "m all criminal prosecutions, the aeoused stall ergoy the right.,. to be confronted "with the •witnesses against him."

It ½ fundamental that the Confrontation Clause is designed to ensure the reliability of the evidence against a erfmirtel defendant by subjecting it to rigorous testing-in the context of on adversary proceeding before the trier of fact." Maryland v. Craig, 497 U.S. 836, 845 (1990). During the trial, Jefitoaon Parish Detective Kevin Deo&er testified that he "authored an arrest warrant for Michael 'WlUarna due to him having been identified fcs hsvg chased the victim across that field that we were just looking-st through the canal to Esther end Horence and shooting Mm multiple times." (Tr, p. 607).

At thb point, defense counsel raised an objection on hearsay grounds. The court agreed and stated that the testimony was not coming in and that nobody would testify to what he was told. (Tr. p.

609). The court specifically ordered the jury to disregard the testimony as to what the witness was told. (It. p. 610). Defense counsel diligently objected to hearsay evidence in a timely manner.

The trial court summarily excluded potential hearsay evidence and issued, « requested, a curative instruction. Based on the trial court's grant of relief after the brief refutation, the petitioner cannot establish prejudice or unfairness. CONCLUSION Under the authority of LSA-C.CrP. art. 930 A the petition»! in an application for post-conviction relief shall have the burden of proving that relief should be granted.

The petitioner has not met his heavy burden on his claims. The petitioner had a fair trial with reliable results. He has had judicial review of his convictions and sentence. He has failed to prove the existence of constitutional errors grave enough to warrant post-conviction relief.

The court will deny relief on all claims. Accordingly, [[Image here]] [[Image here]]