

SUPREME COURT OF ARKANSAS

Booth v. Kelley

2016 Ark. 169 (2016) · No. CV-15-1063 · Decided April 14, 2016

SUMMARY

The Supreme Court of Arkansas affirmed the dismissal of Derrick L. Booth’s petition for a writ of habeas corpus. The court held that Booth failed to establish that the judgment was facially invalid or that the trial court lacked jurisdiction, despite the sentencing order having been signed by a retired judge assigned to serve temporarily in the case.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	April 14, 2016
DOCKET	CV-15-1063
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of a petition for writ of habeas corpus by the Chicot County Circuit Court.
STANDARD OF REVIEW	The circuit court's decision on a petition for writ of habeas corpus is upheld unless clearly erroneous.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Derrick L. Booth v. Wendy Kelley, Director, Arkansas Department of Correction

TOPICS

- state post-conviction relief
- habeas corpus
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- Criminal procedure
- Post-conviction relief
- Habeas corpus
- Appellate procedure

QUESTIONS PRESENTED

1. Whether Booth established that the judgment-and-commitment order was facially invalid or that the trial court lacked jurisdiction, as required for habeas corpus relief.

2. Whether a retired circuit judge temporarily assigned by the chief justice could validly sign Booth's sentencing order when a different judge presided over the trial.
3. Whether the assignment order had to appear in the official case record for the temporary judge's authority to be effective.

HOLDINGS

1. A habeas petitioner who does not proceed under the statutory actual-innocence procedure must plead either that the judgment is facially invalid or that the trial court lacked jurisdiction, and must support the claim with probable-cause evidence of illegal detention. Booth failed to make that showing.
2. A retired circuit judge assigned by the chief justice under Arkansas law and the Arkansas Constitution may temporarily serve in circuit court and validly sign a sentencing order in place of the trial judge.
3. An assignment order issued by the chief justice need not be included in the case record to be effective and to confer authority on the temporarily assigned judge.

KEY QUOTATIONS

“A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the cause.” (2016 Ark. 169, at 2)

“Administrative Order No. 16 does not require the assignment order issued by the chief justice to be included in the record for the case for it to be an effective order that bestows authority on the judge temporarily assigned to a case.” (2016 Ark. 169, at 2)

FACTUAL BACKGROUND

Booth was convicted of arson and sentenced as a habitual offender to 144 months' imprisonment. Judge Wendell Griffen presided over the trial, while retired circuit judge Phillip Shirron, who had been assigned by the chief justice to sit temporarily in circuit court, signed the sentencing order. Booth did not contend that the sentence in the judgment-and-commitment order differed from the sentence pronounced in open court; instead, he argued that the different judge's signature and the absence of the assignment order from the case record rendered the judgment invalid.

PROCEDURAL HISTORY

Booth was convicted by a jury of arson in 2013 and sentenced as a habitual offender to 144 months' imprisonment. The Arkansas Court of Appeals affirmed his conviction. In 2015, while incarcerated in Chicot County, Booth filed a pro se habeas petition seeking release, arguing that the judgment-and-commitment order was facially invalid and that the trial court lacked jurisdiction because a different judge signed the sentencing order. The Chicot County Circuit Court dismissed the petition for failure to state a ground for habeas relief, and the Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Booth v. State, 2014 Ark. App. 572, 444 S.W.3d 900
- Hobbs v. Gordon, 2014 Ark. 225, 434 S.W.3d 364
- Philyaw v. Kelley, 2015 Ark. 465, 477 S.W.3d 503
- Fields v. Hobbs, 2013 Ark. 416

OPINION

PER CURIAM.

Cite as 2016 Ark. 169 SUPREME COURT OF ARKANSAS. No. CV-15-1063 DERRICK L. BOOTH Opinion Delivered April 14, 2016 APPELLANT APPEAL FROM THE CHICOT V. COUNTY CIRCUIT COURT [NO. 09CV-15-116] WENDY KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF HONORABLE DON GLOVER, CORRECTION JUDGE APPELLEE AFFIRMED. PER CURIAM In 2013, appellant Derrick L. Booth was found guilty by a jury of arson.

He was sentenced as a habitual offender to 144 months' imprisonment. The Arkansas Court of Appeals affirmed. Booth v. State, 2014 Ark. App. 572, 444 S.W.3d 900. In 2015, Booth, who was incarcerated in Chicot County, filed a pro se petition for writ of habeas corpus in the Chicot County Circuit Court seeking his release from custody.

The circuit court dismissed the petition on the ground that Booth had not stated a ground for the writ. Booth, who remains incarcerated in Chicot County, brings this appeal. A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. Hobbs v. Gordon, 2014 Ark. 225, at 5, 434 S.W.3d 364, 367. A decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made.

Id. Cite as 2016 Ark. 169 A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the cause. Philyaw v. Kelley, 2015 Ark. 465, 477 S.W.3d 503.

Under our statute, a petitioner for the writ who does not allege his actual innocence and proceed under Act 1780 of 2001 Acts of Arkansas must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a showing by affidavit or other evidence of probable cause to believe that he is illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl.

2006). Unless the petitioner in proceedings for a writ of habeas corpus can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. Fields v. Hobbs, 2013 Ark. 416. Booth's argument on appeal, as it was in the habeas petition, is that the trial court lacked jurisdiction in his case and the

judgment was invalid on its face because the judgment- and-commitment order was signed by a different judge than the judge who presided over his trial and did not appear in the official record for the case.

The record lodged on direct appeal from the judgment reflects that Judge Wendell Griffen presided at the trial and Judge Phillip Shirron, a retired circuit judge “on assignment,” signed the sentencing order. Booth does not contend that the sentence reflected on the judgment-and-commitment order is different from the sentence pronounced in open court. Booth was found guilty on July 10, 2013.

The judgment was signed by Judge Shirron on July 23, 2013, and entered of record on July 24, 2013. We take judicial notice that this court entered an order on July 22, 2013, pursuant to Act 496 of 1965, as amended, and amendment 80 of the Arkansas Constitution, codified as Arkansas Code Annotated section 2 Cite as 2016 Ark. 169 16-10-101(b)(1) (1987), assigning Judge Shirron, a retired judge, to sit in the place of Judge Griffen on the dates of July 22, 23, and 24, 2013.

While Booth contends that the fact that this court’s order assigning Judge Shirron to act in Judge Griffen’s stead rendered the judgment in his case illegal, he offers no persuasive authority to demonstrate that section 16-10-101(b)(1), which gave the chief justice the authority to make such an assignment, deprived the trial court of jurisdiction in his case or invalidated the judgment-and-commitment order that was entered.

Arkansas Supreme Court Administrative Order No. 16(1), in accordance with amendment 80, section 13(C)(D) of the Arkansas Constitution, authorizes the chief justice of this court to assign sitting circuit court judges, retired circuit, chancery, circuit/chancery, and appellate court judges and justices, and sitting state district court judges, with their consent, to serve temporarily in circuit court.

Administrative Order No. 16 does not require the assignment order issued by the chief justice to be included in the record for the case for it to be an effective order that bestows authority on the judge temporarily assigned to a case.

As Booth failed to establish that the judgment was invalid on its face or that the trial court lacked jurisdiction in his case, he did not state a ground for a writ of habeas corpus. Accordingly, we affirm the circuit court’s order. Fields, 2013 Ark. 416. Affirmed. Derrick L. Booth, pro se appellant. Leslie Rutledge, Att’y Gen., by: Kent Holt, Ass’t Att’y Gen., for appellee.