

SUPREME COURT OF GEORGIA

Bates v. State, 277 Ga. 771

596 S.E.2d 145 (2004) · No. S04A0221 · Decided April 27, 2004

OPINION

FLETCHER, J.

596 S.E.2d 145 (2004) 277 Ga. 771 BATES v. The STATE. No. S04A0221. Supreme Court of Georgia. April 27, 2004. *146 Carey, Jarrard & Walker, Lucy K. Henry, Gainesville, for appellant. Jason Deal, Dist. Atty., Jennifer C. Bagwell, Asst. Dist. Atty., Thurbert E. Baker, Atty. Gen., Frank M. Gaither, Jr., Asst. Atty. Gen., for appellee. FLETCHER, Chief Justice. A jury convicted Clifton Boyd Bates of felony murder, aggravated assault, and possession of a firearm during the commission of a felony arising out of the shooting death of Bates's brother.

This Court previously affirmed his convictions, but remanded for the trial court to address the claim of ineffectiveness of trial counsel.[1] Bates now appeals the trial court's denial of that claim. Because Bates has not established that his trial counsel's performance prejudiced him, we affirm.

The evidence at trial showed that Bates and the victim were brothers. After arguing earlier in the day, Bates held a gun as he stood in the doorway of the victim's bedroom, while the victim sat on the bed. The two continued to argue and the victim said, "You've been bullying me for many years, if you're going to shoot me, just go ahead and shoot me now." Bates pointed his gun at the victim and shot him in the head from a distance of one foot.

To establish a claim of ineffective assistance of counsel, a defendant must show that the attorney's performance fell below an objective standard of reasonableness, and that, but for this deficient performance, a reasonable probability exists that the result of the trial would have been different. [2] A court need not examine the deficiency prong when the record demonstrates that no prejudice occurred.[3] Bates's contentions regarding ineffective assistance of counsel stem from counsel's pursuit of a defense based on involuntary manslaughter with the underlying offense being either reckless conduct or pointing a gun at another.

Bates contends that trial counsel was deficient in pursuing this defense. Bates, however, has not pointed to any other defense that should have been pursued. Therefore, he has failed to meet his burden of proving prejudice. Bates also contends counsel was deficient for letting Bates testify because the defense of involuntary manslaughter based on reckless conduct was insupportable in light of his testimony that he intentionally pointed the gun at his brother in order to frighten him.

Even absent Bates's testimony, however, a charge on reckless conduct was not authorized because of the other ample evidence showing that Bates acted intentionally in pointing the gun.[4]

Therefore, Bates has failed to demonstrate that his counsel's alleged deficiency was prejudicial. Judgment affirmed. All the Justices concur. NOTES [1] Bates v. State, 275 Ga. 862, 572 S.E.2d 550 (2002).

[2] Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). [3] Lajara v. State, 263 Ga. 438, 440, 435 S.E.2d 600 (1993). [4] Bates, 275 Ga. at 863-864, 572 S.E.2d 550 (detailing evidence presented at trial).