

INDIANA SUPREME COURT

State of Indiana v. Frank Greene

16 N.E.3d 416 (Ind. 2014) · No. 49S02-1403-PC-172 · Decided September 17, 2014

SUMMARY

The Indiana Supreme Court reversed a post-conviction court’s reduction of Frank Greene’s Class B felony criminal confinement conviction to a Class D felony. The court held that Greene’s trial and appellate counsel were not ineffective for failing to rely on Long v. State because Greene’s interpretation of that precedent was legally incorrect. The evidence supported an inference that Greene’s strangulation of the victim facilitated her forcible removal and caused serious bodily injury.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Justice David; Chief Justice Rush; Justice Dickson; Justice Rucker; Justice Massa
JURISDICTION	Indiana
DECIDED	September 17, 2014
DOCKET	49S02-1403-PC-172
DISPOSITION	reversed
PROCEDURAL POSTURE	The State appealed from a post-conviction court judgment reducing Greene’s class B felony criminal confinement conviction to a class D felony based on alleged ineffective assistance of trial and appellate counsel. The Indiana Court of Appeals affirmed, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	A judgment granting post-conviction relief is reversed only for clear error. The reviewing court considers only the evidence supporting the judgment and reasonable inferences from that evidence, without reweighing evidence or judging witness credibility. Ineffective assistance requires deficient performance and resulting prejudice under Strickland.
PRECEDENTIAL VALUE	Published and precedential Indiana Supreme Court opinion
PARTIES	State of Indiana v. Frank Greene

TOPICS

post-conviction relief

ineffective assistance

criminal procedure

statutory interpretation

appellate procedure

PRACTICE AREAS

criminal law

post-conviction litigation

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the post-conviction court clearly erred in finding that trial and appellate counsel provided ineffective assistance by failing to cite *Long v. State* when challenging the sufficiency of the evidence supporting Greene's class B felony criminal confinement conviction.
2. Whether *Long v. State* required the State to prove that serious bodily injury occurred during the physical act of moving the victim from one place to another.

HOLDINGS

1. *Long* and *Redman* require serious bodily injury to result from the charged offense of forcible removal, but do not require the injury to occur simultaneously with the physical movement from one place to another. The force used to effectuate the removal may cause the injury before or during the movement, so long as the force, removal, and resulting injury constitute one incident.
2. Greene did not receive ineffective assistance because counsel cannot be deemed deficient for failing to present an incorrect interpretation of precedent. Counsel's failure to argue that *Long* required serious bodily injury during the actual movement of the victim did not fall below an objective standard of reasonableness.
3. The evidence was sufficient to support the class B felony conviction because the factfinder could reasonably infer that Greene's strangulation of Johnson both facilitated her forcible removal from the bedroom to the living room and caused serious bodily injury in the form of unconsciousness.

KEY QUOTATIONS

"Thus, the victim must suffer serious bodily injury as the result of the act of forcible removal, whether or not the act of force occurs simultaneously with the act of removal."

"What Greene argues his trial and appellate counsel should have argued, then, is not the law."

FACTUAL BACKGROUND

During a two-day incident in November 2008, Greene held his girlfriend captive in their shared apartment and strangled her in the bedroom until she lost consciousness. She regained consciousness on a couch in the living room. Greene was convicted of class B felony criminal confinement based on forcible removal resulting in serious bodily injury, along with other offenses, and received an aggregate fifty-year executed sentence.

PROCEDURAL HISTORY

Greene was convicted after a bench trial of class B felony criminal confinement and other offenses and received an aggregate fifty-year executed sentence. On direct appeal, the Court of Appeals affirmed the confinement conviction, and the Indiana Supreme Court denied transfer. Greene later sought post-conviction relief, alleging that counsel were ineffective for failing to cite *Long v. State*. The post-conviction court reduced the conviction and ordered resentencing; the Court of Appeals affirmed before the Supreme Court granted transfer.

DISPOSITION

reversed

CASES CITED

- *Long v. State*, 743 N.E.2d 253 (Ind. 2001)
- *Redman v. State*, 743 N.E.2d 263 (Ind. 2001)
- *Kelly v. State*, 535 N.E.2d 140 (Ind. 1989)
- *Ben-Yisrayl v. State*, 738 N.E.2d 253 (Ind. 2000)
- *Landis v. State*, 749 N.E.2d 1130 (Ind. 2001)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *Vermillion v. State*, 719 N.E.2d 1201 (Ind. 1999)
- *Stevens v. State*, 770 N.E.2d 739 (Ind. 2002)
- *Spaulding v. Int'l Bakers Servs., Inc.*, 550 N.E.2d 307 (Ind. 1990)
- *Naugle v. Beech Grove City Sch.*, 864 N.E.2d 1058 (Ind. 2007)
- *Carter v. State*, 766 N.E.2d 377 (Ind. 2002)
- *State v. Evans*, 810 N.E.2d 335 (Ind. 2004)
- *Young v. State*, 725 N.E.2d 78 (Ind. 2000)
- *Greene v. State*, No. 49A05-0905-CR-250 (Ind. Ct. App. Oct. 30, 2009)
- *State v. Greene*, No. 49A02-1303-PC-228 (Ind. Ct. App. Dec. 27, 2013)