

SUPREME COURT OF SOUTH CAROLINA

Rhodes v. State, 349 S.C. 25

561 S.E.2d 606 (2002) · No. No. 25431 · Decided March 25, 2002

SUMMARY

The Supreme Court of South Carolina affirmed the denial of post-conviction relief to Moscoe Rhodes, who claimed trial counsel was ineffective for failing to object to testimony concerning a rumor identifying him as the shooter. The court held the testimony was not hearsay because it was offered to explain the victim's identification process, and concluded that counsel's decision to use the testimony as part of a reasonable defense strategy did not constitute ineffective assistance.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Waller; Chief Justice Toal; Justice Moore; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	March 25, 2002
DOCKET	No. 25431
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner sought review by writ of certiorari of the post-conviction relief court's denial of relief on his ineffective-assistance-of-trial-counsel claim.
STANDARD OF REVIEW	To establish ineffective assistance of counsel, a PCR applicant must show that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability the result would have been different. The court also applied procedural-preservation principles to issues not raised before or ruled upon by the PCR court.
PRECEDENTIAL VALUE	Published and precedential opinion of the Supreme Court of South Carolina
PARTIES	Moscoe Rhodes v. State of South Carolina

TOPICS

state post-conviction relief

ineffective assistance

hearsay

character evidence

appellate procedure

PRACTICE AREAS

state post-conviction relief

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether testimony that a witness had heard Rhodes was responsible for the shooting was inadmissible hearsay.
2. Whether trial counsel was ineffective for failing to object to that testimony.
3. Whether Rhodes could obtain relief based on an improper-character-evidence theory when that theory was not raised before or ruled upon by the PCR court.

HOLDINGS

1. The testimony was not hearsay because it was not offered to prove that Rhodes committed the crimes; it was offered to explain Cook's identification of Rhodes in the yearbook, which led to the investigation and subsequent photographic identifications.
2. Rhodes failed to establish ineffective assistance of counsel. Counsel articulated an objectively reasonable trial strategy of portraying the information as rumor and using it to create reasonable doubt, and the court found no resulting entitlement to PCR relief.
3. The character-evidence theory was procedurally barred because it was not raised at the PCR hearing or ruled upon by the PCR court. Even assuming the argument could be construed under German, the PCR court correctly denied relief.

KEY QUOTATIONS

“The rule against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted.” (31)

“Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” (33)

FACTUAL BACKGROUND

Rhodes was convicted of offenses arising from a shooting at a mobile home park in which Kendra Wilson was injured and Horace Cook was present. After a friend told Cook that Rhodes might have been involved, Cook reviewed a yearbook, identified Rhodes, and later both Cook and Wilson identified Rhodes in separate photographic lineups. At trial, defense counsel did not object to testimony concerning the rumor but cross-examined the witness and argued that the identification originated from rumor and innuendo.

PROCEDURAL HISTORY

Rhodes was convicted of multiple offenses arising primarily from a shooting, including two counts of assault and battery with intent to kill. The Court of Appeals affirmed on direct appeal. Rhodes then sought post-

conviction relief, alleging trial counsel was ineffective for failing to object to testimony that a witness had heard Rhodes was responsible for the shooting. The PCR court denied relief, and the South Carolina Supreme Court granted certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Rhodes, Op. No. 96-UP-240 (S.C. Ct. App. filed July 30, 1996)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)
- Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001)
- State v. Pollard, 260 S.C. 457, 196 S.E.2d 839 (1973)
- German v. State, 325 S.C. 25, 478 S.E.2d 687 (1996)
- State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001)
- Plyler v. State, 309 S.C. 408, 424 S.E.2d 477 (1992)
- Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)
- Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)
- State v. Brown, 317 S.C. 55, 451 S.E.2d 888 (1994)
- State v. Dennison, 305 S.C. 161, 406 S.E.2d 383 (Ct. App. 1991)