

TEXAS COURT OF CRIMINAL APPEALS

In re Keith Patrick McKay

In re McKay · No. WR-84,204-01; No. 12-05-00282-CR · Decided November 17, 2015

SUMMARY

This document is a relator's petition for writ of mandamus filed in the Texas Court of Criminal Appeals on behalf of Keith Patrick McKay. It challenges proceedings arising from Houston County convictions and asserts ineffective assistance of counsel concerning competency, insufficient DNA evidence, and ineffective assistance during trial. The petition requests relief including reversal of the sentences and/or a new trial.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	November 17, 2015
DOCKET	WR-84,204-01; No. 12-05-00282-CR
DISPOSITION	other
PROCEDURAL POSTURE	Relator submitted a petition for writ of mandamus challenging an order of the 349th Judicial District Court of Houston County, Texas, and seeking relief related to prior criminal convictions, alleged ineffective assistance of counsel, competency to stand trial, and sufficiency of the evidence.
STANDARD OF REVIEW	The petition invokes the Strickland v. Washington standard for ineffective assistance of counsel and the Jackson v. Virginia standard for legal sufficiency, while also discussing Texas factual-sufficiency review and competency-to-stand-trial procedures.
PRECEDENTIAL VALUE	nonprecedential filing; no decision is included
PARTIES	Keith Patrick McKay, Relator/Applicant v. Hon. Pam Fletcher, Respondent, The State of Texas

TOPICS

[criminal procedure](#)[appellate procedure](#)[post-conviction relief](#)[ineffective assistance](#)[evidence](#)

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

ineffective assistance of counsel

criminal evidence

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to investigate and raise McKay's competency to stand trial.
2. Whether the evidence was legally or factually insufficient to support McKay's conviction for sexual assault because the physical evidence did not link him to the offense.
3. Whether trial counsel rendered ineffective assistance by failing to present mitigating evidence and properly impeach the complainant with alleged prior inconsistent statements.

KEY QUOTATIONS

"The proper predicate for impeachment by prior inconsistent statement requires that the witness first be asked if he made the contradictory statement at a certain place and time, and to a certain person." (34)

FACTUAL BACKGROUND

The petition states that McKay was convicted of four felony offenses arising from an assault and burglary at the complainant's home in Crockett, Texas, and was sentenced to ninety-nine years in prison. It asserts that fingerprints, footprints, and DNA evidence collected from the scene did not link McKay to the offenses. It also relies on McKay's behavior during the punishment phase and alleged history of mental illness to argue that trial counsel should have investigated his competency to stand trial.

PROCEDURAL HISTORY

McKay was convicted by a jury in Houston County Cause Number 05-CR-005 of aggravated sexual assault, injury to an elderly individual, burglary of a habitation, and burglary of a habitation with intent to commit assault, and received a ninety-nine-year sentence. The petition states that a direct appeal was denied. The document is a relator's petition and does not contain a judicial disposition by the Texas Court of Criminal Appeals.

DISPOSITION

other

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 315-16, 319, 99 S. Ct. 2781, 2786-87, 2789, 61 L. Ed. 2d 560 (1979)
- Strickland v. Washington, 466 U.S. 668, 687, 695, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Ex parte Martinez, 330 S.W.3d 891, 900 (Tex. Crim. App. 2011)
- Hernandez v. State, 726 S.W.2d 53, 55-56 (Tex. Crim. App. 1986)
- Thompson v. State, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999)

- Ex parte Felton, 815 S.W.2d 733, 735 (Tex. Crim. App. 1991)
- Ex parte LaHood, 401 S.W.3d 45 (Tex. Crim. App. 2013)
- Sisco v. State, 599 S.W.2d 607, 614 (Tex. Crim. App. 1980)
- Barber v. State, 737 S.W.2d 824 (Tex. Crim. App. 1987)
- Caballero v. State, 587 S.W.2d 741 (Tex. Crim. App. 1979)
- Montoya v. State, 291 S.W.3d 420, 425 (Tex. Crim. App. 2009)
- Gonzales v. State, 313 S.W.3d 840, 841-42 (Tex. Crim. App. 2010)
- Morris v. State, 301 S.W.3d 281, 286 (Tex. Crim. App. 2009)
- Clewis v. State, 922 S.W.2d 126, 129-30 (Tex. Crim. App. 1996)
- Santellan v. State, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997)
- Watson v. State, 204 S.W.3d 404, 414-15, 417 (Tex. Crim. 2006)
- Ortiz v. State, 93 S.W.3d 79, 87 (Tex. Crim. App. 2002)
- Jones v. State, 944 S.W.2d 642, 648 (Tex. Crim. App. 1996)
- Huffman v. State, 479 S.W.2d 62 (Tex. Crim. App. 1973)
- Huff v. State, 576 S.W.2d 645, 647 (Tex. Crim. App. 1979)
- Ellingsworth v. State, 487 S.W.2d 108 (Tex. Crim. App. 1972)
- Thrash v. State, 500 S.W.2d 834 (Tex. Crim. App. 1974)
- Wood v. State, 511 S.W.2d 37, 43 (Tex. Crim. App. 1974)
- Moore v. State, 652 S.W.2d 411, 413 (Tex. Crim. App. 1983)
- Haynes v. State, 627 S.W.2d 710, 712-13 (Tex. Crim. App. 1982)
- Kepley v. State, 320 S.W.2d 143, 145 (Tex. Crim. App. 1959)
- Sloan v. State, 129 Tex. Crim. 131, 84 S.W.2d 484 (1935)
- Cherb v. State, 472 S.W.2d 273, 278 (Tex. Crim. App. 1971)
- Walker v. State, 17 White & W. 16 (1884)