

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Steven J. Dukes v. Donnie Ames, Superintendent, Mt. Olive
Correctional Complex

No. 21-0324 (W. Va. May 26, 2022) (memorandum decision) · No. No. 21-0324 · Decided May 26, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Steven J. Dukes’s second habeas corpus petition challenging his life recidivist sentence. The court held that Dukes’s North Carolina cocaine-possession conviction qualified as a predicate felony, that the life sentence was not unconstitutionally disproportionate, and that his ineffective-assistance claims failed under the Strickland/Miller standard. The decision was issued as a memorandum decision under Rule 21, with Chief Justice Hutchison dissenting from the decision to resolve the case without oral argument or a formal opinion.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William D. Wooton; Chief Justice John A. Hutchison; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	May 26, 2022
DOCKET	No. 21-0324
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the denial of his second state habeas corpus petition, which raised challenges to the validity and proportionality of his life recidivist sentence and claims of ineffective assistance of counsel.
STANDARD OF REVIEW	In a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo. Unpreserved issues are reviewed for plain error. Ineffective-assistance claims are governed by the Strickland/Miller two-pronged test.
PRECEDENTIAL VALUE	Published memorandum decision under West Virginia Rule of Appellate Procedure 21; the court treated the controlling rules as

binding but resolved the appeal without a formal opinion.

PARTIES

Steven J. Dukes v. Donnie Ames, Superintendent, Mt. Olive Correctional Complex

TOPICS

state post-conviction relief

habeas corpus

sentencing

constitutional law

statutory interpretation

PRACTICE AREAS

post-conviction relief

criminal procedure

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appellate procedure

QUESTIONS PRESENTED

1. Whether plain error required reversal of the recidivist conviction because Dukes's 1992 North Carolina cocaine-possession conviction allegedly would have been a misdemeanor under West Virginia law.
2. Whether Dukes's life sentence under West Virginia's recidivist statute was unconstitutionally disproportionate under Article III, Section 5 of the West Virginia Constitution and the Eighth Amendment.
3. Whether trial, appellate, or habeas counsel provided ineffective assistance by failing to challenge the North Carolina conviction as an invalid predicate and by failing to raise proportionality arguments.

HOLDINGS

1. The North Carolina conviction was a valid predicate felony because it was classified as a felony and was punishable by confinement in a penitentiary; for recidivist purposes, the punishment prescribed by the foreign jurisdiction's law determines whether the offense is a felony.
2. Dukes's life recidivist sentence was not unconstitutionally disproportionate because at least two predicate felony convictions involved actual or threatened violence or a substantial impact on a victim.
3. Dukes failed to establish ineffective assistance because his sentence was legally valid, making counsel's failure to pursue those arguments neither objectively deficient nor prejudicial.

KEY QUOTATIONS

"To trigger application of the 'plain error' doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings." (3)

"For purposes of a life recidivist conviction under West Virginia Code § 61-11-18(c), two of the three felony convictions considered must have involved either (1) actual violence, (2) a threat of violence, or (3) substantial impact upon the victim such that harm results." (5)

"In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." (7)

FACTUAL BACKGROUND

A cooperating drug dealer identified Dukes as her heroin supplier, and police stopped him while he was driving toward her residence after arranging a proposed heroin delivery. Officers found bundles of heroin during a pat-down. A jury convicted Dukes of possession of heroin with intent to deliver, and a later recidivist proceeding relied on that conviction, a West Virginia firearm-related felony, and a 1992 North Carolina cocaine-possession felony to impose a life sentence. Dukes later challenged the predicate North Carolina conviction, the proportionality of his sentence, and the effectiveness of counsel in state habeas proceedings.

PROCEDURAL HISTORY

Dukes was convicted in 2012 of possession of heroin with intent to deliver and received a life sentence under West Virginia's recidivist statute after a jury found the requisite prior felony convictions, including a 1992 North Carolina cocaine-possession conviction. His direct appeal and first habeas petition were unsuccessful. In his second habeas proceeding, the circuit court denied relief after an omnibus evidentiary hearing, concluding that counsel was not ineffective and that the life sentence was constitutionally proportionate. The Supreme Court of Appeals of West Virginia affirmed by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- State v. Dukes, No. 13-0649, 2014 WL 1672948 (W. Va. Apr. 25, 2014) (memorandum decision)
- Dukes v. Ballard, No. 15-0382, 2016 WL 1550773 (W. Va. Apr. 15, 2016) (memorandum decision)
- Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State v. Davis, 232 W. Va. 398, 752 S.E.2d 429 (2013)
- State ex rel. Cogar v. Haynes, 154 W. Va. 805, 180 S.E.2d 492 (1971)
- State v. Jones, 187 W. Va. 600, 420 S.E.2d 736 (1992)
- State ex rel. Appleby v. Recht, 213 W. Va. 503, 583 S.E.2d 800 (2002)
- State v. Costello, 245 W. Va. 19, 857 S.E.2d 51 (2021)
- State v. Lewis, 235 W. Va. 694, 776 S.E.2d 591 (2015)
- State v. Norwood, 242 W. Va. 149, 832 S.E.2d 75 (2019)
- Jones v. Brinkley, 93 S.E. 372 (N.C. 1917)
- Wanstreet v. Bordenkircker, 166 W. Va. 523, 276 S.E.2d 205 (1981)
- State v. Vance, 164 W. Va. 216, 262 S.E.2d 423 (1980)

- State v. Cooper, 172 W. Va. 266, 304 S.E.2d 851 (1983)
- State v. Beck, 167 W. Va. 830, 286 S.E.2d 234 (1981)
- State v. Hoyle, 242 W. Va. 599, 836 S.E.2d 817 (2019)
- State v. Plante, No. 19-0109, 2020 WL 6806375 (W. Va. Nov. 19, 2020) (memorandum decision)
- State v. Gaskins, No. 18-0575, 2020 WL 3469894 (W. Va. June 25, 2020) (memorandum decision)
- Gaskins v. West Virginia, 141 S. Ct. 2578 (2021)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State ex rel. Daniel v. Legursky, 195 W. Va. 314, 465 S.E.2d 416 (1995)

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