

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

Rosado v. Allen

494 F. Supp. 2d 51 (D. Mass. 2007) · No. Civil Action No. 02-10359-DPW · Decided June 29, 2007

SUMMARY

The court denied the petitioner’s application for a Certificate of Appealability in a federal habeas corpus proceeding under 28 U.S.C. § 2254. Although the court found that its conclusion regarding trial counsel’s performance in failing to consult a mental-health expert was debatable, it held that the petitioner could not show prejudice under the Brecht standard. Because the lack-of-prejudice ground independently supported denial of relief, the court concluded that the ineffective-assistance claim did not warrant further appellate review.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Douglas P. Woodlock
JURISDICTION	Massachusetts
DECIDED	June 29, 2007
DOCKET	Civil Action No. 02-10359-DPW
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought a Certificate of Appealability under 28 U.S.C. § 2253 from the denial of his 28 U.S.C. § 2254 habeas petition, challenging the rejection of an ineffective-assistance claim based on trial counsel's failure to consult a psychological expert regarding a mental-capacity defense.
STANDARD OF REVIEW	A Certificate of Appealability requires a showing that the district court's resolution of a constitutional claim is fairly debatable among reasonable jurists and that the claim deserves encouragement to proceed further. For prejudice in a 28 U.S.C. § 2254 proceeding, the court applied the Brecht substantial-and-injurious-effect standard.
PRECEDENTIAL VALUE	published district court memorandum and order
PARTIES	David W. Rosado, Petitioner v. Peter Allen, Respondent

TOPICS

federal habeas corpus

ineffective assistance

post-conviction relief

appellate procedure

standard of review

PRACTICE AREAS

federal habeas corpus

criminal procedure

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QUESTIONS PRESENTED

1. Whether reasonable jurists could debate the district court's conclusion that trial counsel was not ineffective for failing to consult a mental-health professional regarding a possible mental-capacity defense.
2. Whether reasonable jurists could debate the district court's conclusion that Rosado suffered no prejudice from the alleged ineffective assistance under the Brecht substantial-and-injurious-effect standard.
3. Whether Rosado was entitled to a Certificate of Appealability under 28 U.S.C. § 2253.

HOLDINGS

1. The court concluded that its determination that trial counsel was not ineffective was debatable because the case law reflected tension between a categorical approach requiring expert consultation whenever a mental-capacity defense might be available and a contextual approach evaluating counsel's conduct in light of the particular case.
2. The court held that its no-prejudice determination was not fairly debatable because, after a full evidentiary hearing and consideration of the expert testimony in the context of the entire trial, the alleged error did not have a substantial and injurious effect on the judgment.
3. The court denied Rosado's Application for a Certificate of Appealability because one of the two adequate and independent grounds supporting denial of habeas relief—the absence of prejudice—did not satisfy the Certificate of Appealability standard.

KEY QUOTATIONS

“In addressing an Application for a Certificate of Appealability, I must evaluate whether my conclusions can be said to be fairly debatable in the sense that reasonable jurists might dispute them, even if every jurist of reason would ultimately agree after consideration that the petitioner should not prevail.” (494 F. Supp. 2d at 52)

“With respect to whether counsel in this case performed effectively, I find my conclusion to be debatable within the meaning of Miller-El.” (494 F. Supp. 2d at 53)

“Consequently, I find that the lack of prejudice basis upon which I rejected the ineffectiveness ground for relief cannot serve as a basis for issuing a Certificate of Appealability.” (494 F. Supp. 2d at 54)

FACTUAL BACKGROUND

Rosado was convicted in state court and later asserted that his trial counsel was ineffective for failing to engage a psychological expert to explore a mental-capacity defense. In the federal habeas proceeding, the district court conducted an evidentiary hearing and considered the potential value of expert testimony in the context of the

entire trial. The court found that the expert testimony would not have produced a different result and therefore found no prejudice.

PROCEDURAL HISTORY

The district court previously dismissed Rosado's state habeas petition after an evidentiary hearing, rejecting the ineffective-assistance claim on two independent grounds: counsel's performance was not deficient, and any deficiency caused no prejudice. Rosado then applied for a Certificate of Appealability. The court concluded that the performance issue was debatable, but that the prejudice determination was not debatable under the governing federal habeas standard, and denied the application.

DISPOSITION

other

CASES CITED

- Rosado v. Allen, 482 F. Supp. 2d 94 (D. Mass. 2007)
- Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)
- Genius v. Pepe, 50 F.3d 60, 60-61 (1st Cir. 1995)
- Genius v. Pepe, 147 F.3d 64, 67-68 (1st Cir. 1998)
- Fry v. Pliler, 127 S. Ct. 2321, 2328 (2007)
- Brecht v. Abrahamson, 507 U.S. 619 (1993)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)