

SUPREME COURT OF GEORGIA

Buckner v. Barrow

297 Ga. 68 (2015) · No. S15A0093 · Decided May 11, 2015

SUMMARY

The Supreme Court of Georgia held that a habeas court was bound by the Court of Appeals' determination that appellate counsel failed to make a sufficient legal argument to preserve a claim of error. The court vacated the habeas decision and remanded for reconsideration of the ineffective-assistance claim consistent with the law-of-the-case doctrine, without deciding its merits.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Blackwell, Justice; All Justices
JURISDICTION	Georgia
DECIDED	May 11, 2015
DOCKET	S15A0093
DISPOSITION	vacated
PROCEDURAL POSTURE	Buckner appealed from the denial of his state habeas corpus petition alleging ineffective assistance of appellate counsel. The Supreme Court of Georgia granted his application for a certificate of probable cause to appeal, and the Warden confessed error.
STANDARD OF REVIEW	The opinion applies the law of the case doctrine to determine whether the habeas court could reexamine an issue resolved on direct appeal.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential
PARTIES	Christopher M. Buckner v. Barrow

TOPICS

- state post-conviction relief
- appellate procedure
- ineffective assistance
- right to counsel
- criminal procedure

PRACTICE AREAS

- criminal procedure
- state habeas corpus
- post-conviction relief
- appellate procedure
- ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the habeas court could find that appellate counsel made a sufficient legal argument when the Court of Appeals had already determined on direct appeal that counsel failed to make a meaningful argument sufficient to preserve the claim.
2. Whether Buckner was entitled to habeas relief on his claim of ineffective assistance of appellate counsel.

HOLDINGS

1. Under the law of the case doctrine, when an issue is raised and resolved on direct appeal from a criminal conviction, the habeas court is bound by the appellate ruling and may not reexamine it, even if the ruling appears erroneous or concerns whether a claim was preserved for review.
2. The court did not decide whether Buckner's ineffective-assistance claim had merit; instead, it remanded for the habeas court to reconsider the claim consistently with the Court of Appeals' prior determination.

KEY QUOTATIONS

“Under the law of the case doctrine, if an issue is raised and resolved on direct appeal from a criminal conviction, the habeas court is bound by the appellate ruling and cannot reexamine it, even if it appears erroneous, and even if the erroneous ruling was that a claim of error had not been preserved for review.” (297 Ga. 68)

FACTUAL BACKGROUND

Buckner was convicted of trafficking in MDMA and possessing MDMA with intent to distribute. On direct appeal, the Court of Appeals rejected one claim because appellate counsel had failed to make a meaningful legal argument supporting it. Buckner's subsequent habeas petition alleged that this failure constituted ineffective assistance of appellate counsel.

PROCEDURAL HISTORY

Buckner was convicted of violations of the Georgia Controlled Substances Act, and the Court of Appeals affirmed. That court rejected one claim because Buckner had abandoned it by failing to present a meaningful legal argument. Buckner later filed a habeas petition alleging that appellate counsel was ineffective for failing to make an argument sufficient to preserve the claim. The habeas court denied relief, but the Supreme Court of Georgia vacated and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The habeas court must reconsider Buckner's ineffective-assistance claim consistently with the Court of Appeals' earlier determination that appellate counsel failed to make a legal argument sufficient to preserve the underlying claim of error.

CASES CITED

- Buckner v. State, 321 Ga. App. 715, 718 (742 SE2d 528) (2013)
- Roulain v. Martin, 266 Ga. 353, 353-354 (1) (466 SE2d 837) (1996)
- Foster v. State, 290 Ga. 599, 601 (3) (723 SE2d 663) (2012)
- Crowder v. State, 288 Ga. 739, 740 (707 SE2d 78) (2011)
- Johnson v. Roberts, 287 Ga. 112, 114 (694 SE2d 661) (2010)
- Harden v. Johnson, 280 Ga. 464, 465 (629 SE2d 259) (2006)

OPINION

BLACKWELL, J.

In the Supreme Court of Georgia Decided: May 11, 2015 S15A0093. BUCKNER v. BARROW. BLACKWELL, Justice. Christopher M. Buckner was convicted of violations of the Georgia Controlled Substances Act,¹ he appealed, and the Court of Appeals affirmed his convictions. See Buckner v. State, 321 Ga. App. 715 (742 SE2d 528) (2013).

In his appeal, Buckner asserted several claims of error, but the Court of Appeals rejected them all. It rejected one on the ground that Buckner had abandoned it by his failure to make any meaningful legal argument in his appellate brief in support of that claim. See *id.* at 718 (3). Buckner then filed a petition for a writ of habeas corpus, alleging that he was denied the effective assistance of counsel on appeal when his appellate counsel failed to make a legal argument sufficient to preserve a claim of error.

The habeas court denied his petition, finding that ¹ More specifically, Buckner was convicted of trafficking in ^{3,4} methylenedioxymethamphetamine — also known as MDMA or, more commonly, ecstasy — and possession of MDMA with intent to distribute. the appellate brief “clearly reflects that appellate counsel provided a legal argument,” and for that reason, appellate counsel was not ineffective.

Representing himself, Buckner appeals from the denial of his habeas petition,² the Warden confesses error, and we vacate and remand for further proceedings consistent with this opinion. As the Warden concedes, the habeas court was not permitted to find that appellate counsel made legal arguments sufficient to preserve a claim of error on appeal when the Court of Appeals already had found otherwise.

Under the law of the case doctrine, if an issue is raised and resolved on direct appeal from a criminal conviction, the habeas court is bound by the appellate ruling and cannot reexamine it, even if it appears erroneous, and even if the erroneous ruling was that a claim of error had not been preserved for review.³ Roulain v. Martin, 266 Ga. 353, 353-354 (1) (466 SE2d 837) (1996).

See also *Foster v. State*, 290 Ga. 599, 601 (3) (723 SE2d 663) (2012). The habeas court erred with 2 Buckner timely filed an application for a certificate of probable cause to appeal from the decision of the habeas court, see OCGA § 9-14-52, and we granted that application. 3 We do not mean to suggest that the Court of Appeals erred in Buckner's direct appeal.

But the habeas court obviously thought that the Court of Appeals had erred. We express no opinion about the correctness of Buckner. 2 respect to the particular ground upon which it rejected Buckner's contention that he was denied the effective assistance of counsel on appeal when his appellate lawyer failed to make legal argument sufficient to preserve a claim of error, and we vacate the decision of the habeas court.

We do not now decide whether that contention of ineffective assistance has merit. Instead, we remand for the habeas court to reconsider it in a way that is consistent with the earlier determination by the Court of Appeals that appellate counsel did, in fact, fail to make legal argument sufficient to preserve the claim of error. See *Crowder v. State*, 288 Ga. 739, 740 (707 SE2d 78) (2011); *Johnson v. Roberts*, 287 Ga. 112, 114 (694 SE2d 661) (2010); *Harden v. Johnson*, 280 Ga. 464, 465 (629 SE2d 259) (2006).

Judgment vacated and case remanded. All the Justices concur. 3