

SUPREME COURT OF GEORGIA

Collier v. State

290 Ga. 456 (2012) · Decided February 6, 2012

SUMMARY

The Georgia Supreme Court held that the habeas court properly rejected most of Collier’s claims as procedurally barred or waived and was not required to hold a hearing on those claims. However, the court held that the ineffective-assistance-of-appellate-counsel claim could not be resolved solely from the petition and that the habeas court could not deny it on the merits based only on Collier’s failure to prosecute. The judgment was affirmed in part and reversed in part.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Melton, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	February 6, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of a state habeas petition after the Supreme Court of Georgia granted Collier’s application for a certificate of probable cause.
STANDARD OF REVIEW	Review of the habeas court’s application of procedural bars and statutory hearing requirements; whether the habeas court was authorized to deny an ineffective-assistance-of-appellate-counsel claim on the merits without a hearing.
PRECEDENTIAL VALUE	Published and precedential decision of the Supreme Court of Georgia
PARTIES	Kelvin Collier v. State

TOPICS

- state post-conviction relief
- habeas corpus
- ineffective assistance
- default
- appellate procedure

PRACTICE AREAS

- state habeas corpus
- post-conviction relief
- criminal appellate procedure

QUESTIONS PRESENTED

1. Whether the habeas court was required to hold a hearing on claims that were procedurally barred, waived, or could have been raised on direct appeal.
2. Whether an ineffective-assistance-of-appellate-counsel claim could be resolved solely from the face of the habeas petition.
3. Whether the habeas court could deny the ineffective-assistance-of-appellate-counsel claim on the merits based solely on Collier's failure to prosecute rather than dismissing it without prejudice.

HOLDINGS

1. A habeas court need not hold a hearing when it can determine from the face of the petition that the claims are procedurally barred or otherwise without merit. Because Collier's claims other than ineffective assistance of appellate counsel had been adjudicated or could have been raised on direct appeal, the habeas court properly resolved them without a hearing.
2. An ineffective-assistance-of-appellate-counsel claim alleging failure to raise an error on appeal cannot be resolved solely from the face of the habeas petition when resolution requires determining counsel's tactical reasonableness and whether the alleged error probably affected the appeal's outcome. The habeas court therefore was required to conduct a hearing on Collier's claim.
3. The habeas court could either deny the ineffective-assistance claim on the merits after conducting a hearing or dismiss the claim without prejudice for failure to prosecute, but it could not deny the claim on the merits solely because Collier failed to prosecute it.

KEY QUOTATIONS

“The habeas court’s obligation to schedule such a hearing is mandatory unless the court “is able to determine from the face of the petition that it is without merit.”” (290 Ga. at 457)

“While the habeas court was authorized to either deny the claim on the merits following a hearing or dismiss it without prejudice based on Collier’s failure to prosecute it, it was not authorized to deny Collier’s claim on the merits based on his failure to prosecute it.” (290 Ga. at 458)

FACTUAL BACKGROUND

On May 10, 2005, Kelvin Collier pleaded guilty to trafficking in cocaine, possession of marijuana with intent to distribute, and tampering with evidence. He received a thirty-year sentence, ten years to serve and twenty years on probation. In his later habeas petition, he asserted that his plea was involuntary or deficient and that he had received ineffective assistance of trial and appellate counsel. The habeas court scheduled a hearing, but Collier did not appear; it treated most claims as procedurally barred or waived and denied the appellate-counsel claim for failure to prosecute.

PROCEDURAL HISTORY

Collier pleaded guilty in 2005 and received a thirty-year sentence, with ten years to serve and the balance on probation. After the Court of Appeals affirmed the denial of his motion to withdraw his plea, Collier filed a

habeas petition raising multiple claims. The habeas court denied most claims as barred or waived and denied the ineffective-assistance-of-appellate-counsel claim for failure to prosecute without holding a hearing. The Supreme Court of Georgia affirmed in part and reversed in part.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The denial of the ineffective-assistance-of-appellate-counsel claim on the merits is reversed. The habeas court may conduct a hearing and decide the claim on the merits, or dismiss it without prejudice for failure to prosecute.

CASES CITED

- Rickett v. State, 276 Ga. 609, 610-611 (2) (581 S.E.2d 32) (2003)
- Schofield v. Meders, 280 Ga. 865 (1) (632 S.E.2d 369) (2006)
- Hall v. Lewis, 286 Ga. 767, 769 (II) (A) (692 S.E.2d 580) (2010)
- General Elec. Capital Corp. v. Browning Mulch Co., Inc., 303 Ga. App. 795 (694 S.E.2d 380) (2010)
- Collier v. State, 281 Ga. App. 646 (637 S.E.2d 72) (2006)