

SUPREME COURT OF VIRGINIA

Hicks v. Dir., Dep't of Corr.

Hicks · No. Record No. 131945 · Decided February 26, 2015

SUMMARY

The Supreme Court of Virginia affirmed the dismissal of Arsean Lamone Hicks’s habeas corpus petition as untimely. The court held that Code § 8.01-229(D) can toll the habeas limitations period in Code § 8.01-654(A)(2) when the claim is based on alleged Brady nondisclosure, but declined to apply the ends-of-justice exception because the allegedly withheld evidence was not material. The court concluded that the evidence would not undermine confidence in Hicks’s convictions for the Open House Diner crimes.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Elizabeth B. Lacy, Senior Justice; Lemons, C.J.; Goodwyn, J.; Millette, J.; Powell, J.; Russell, S.J.; Lacy, S.J.
JURISDICTION	Virginia
DECIDED	February 26, 2015
DOCKET	Record No. 131945
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal of a state habeas corpus petition as untimely.
STANDARD OF REVIEW	The court reviewed the trial court's dismissal of the habeas petition and application of the statutory limitations period de novo; application of the ends-of-justice exception to Rule 5:25 required error and a grave injustice.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential.
PARTIES	Arsean Lamone Hicks v. Director, Department of Corrections

TOPICS

- state post-conviction relief
- habeas corpus
- statutory interpretation
- appellate procedure
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Code § 8.01-229(D) tolls the habeas corpus limitations period in Code § 8.01-654(A)(2) when the alleged obstruction consists of the Commonwealth's failure to disclose exculpatory evidence supporting a Brady claim.
2. Whether the ends-of-justice exception to Supreme Court Rule 5:25 should permit consideration of Hicks's unpreserved tolling argument.
3. Whether the alleged undisclosed evidence was material under Brady and whether denying consideration of the claim would result in a grave injustice.

HOLDINGS

1. Code § 8.01-229(D) applies to and may toll the limitations period established by Code § 8.01-654(A)(2). In a habeas claim based on an alleged Brady violation, the Commonwealth's failure to disclose exculpatory evidence qualifies as obstruction that prevents filing of the claim for purposes of § 8.01-229(D), regardless of whether the nondisclosure was intentional or inadvertent.
2. The ends-of-justice exception to Rule 5:25 did not apply because Hicks failed to establish that denying review of his unpreserved tolling argument would result in a grave injustice.
3. The alleged nondisclosure was not material and therefore did not establish prejudice under Brady.

KEY QUOTATIONS

“For these reasons, we conclude that in a claim for habeas corpus relief based on a Brady violation, the failure to disclose exculpatory evidence qualifies as obstruction by the defendant that prevents the filing of the claim for purposes of Code § 8.01-229(D).” (at 11)

“Because the allegedly nondisclosed evidence was not material, Hicks fails to establish that he was prejudiced and, therefore, has failed to prove a necessary component to his Brady claim.” (at 17)

FACTUAL BACKGROUND

Hicks was convicted of murdering an off-duty federal police officer during the December 30, 1999 robbery of the Open House Diner. The prosecution's evidence included a handgun recovered from the bedroom Hicks shared with Larry Roscoe, forensic evidence linking the handgun to the murder, Hicks's testimony that he possessed Roscoe's gun during an earlier robbery, and Hicks's recorded confession. In 2012, Hicks received an affidavit from Roscoe asserting that Roscoe had told police that the gun and other items were his and had not been used by anyone else; Hicks alleged that the Commonwealth had withheld the related recorded statement.

PROCEDURAL HISTORY

Hicks was convicted of first-degree murder and related firearm, robbery, and conspiracy offenses arising from the Open House Diner robbery. Direct review concluded on January 9, 2004. Hicks filed a habeas petition on July 24, 2013, alleging that the Commonwealth had failed to disclose exculpatory evidence under Brady v.

Maryland. The Norfolk Circuit Court dismissed the petition as untimely under Code § 8.01-654(A)(2), and the Supreme Court of Virginia granted an appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Brady v. Maryland, 373 U.S. 83 (1963)
- Hines v. Kuplinski, 267 Va. 1, 591 S.E.2d 692 (2004)
- Gheorghiu v. Commonwealth, 280 Va. 678, 701 S.E.2d 407 (2010)
- Ali v. Commonwealth, 280 Va. 665, 701 S.E.2d 64 (2010)
- Charles v. Commonwealth, 270 Va. 14, 613 S.E.2d 432 (2005)
- Jimenez v. Commonwealth, 241 Va. 244, 402 S.E.2d 678 (1991)
- Ball v. Commonwealth, 221 Va. 754, 273 S.E.2d 790 (1981)
- Casey v. Merck & Co., 283 Va. 411, 722 S.E.2d 842 (2012)
- Daniels v. Warden, 266 Va. 399, 588 S.E.2d 382 (2003)
- Newman v. Walker, 270 Va. 291, 618 S.E.2d 336 (2005)
- Culpeper Nat'l Bank v. Tidewater Improvement Co., 119 Va. 73, 89 S.E. 118 (1916)
- Strickler v. Greene, 527 U.S. 263 (1999)
- Workman v. Commonwealth, 272 Va. 633, 636 S.E.2d 368 (2006)
- Kyles v. Whitley, 514 U.S. 419 (1995)
- Morris v. Smyth, 202 Va. 832, 120 S.E.2d 465 (1961)

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