

OREGON COURT OF APPEALS

Kleng v. Reyes

350 Or. App. 504 (2026) · No. A184031 · Decided June 10, 2026

SUMMARY

The Oregon Court of Appeals affirmed the denial of Brett George Kleng’s petition for post-conviction relief. The court rejected claims concerning counsel’s failure to seek a judgment of acquittal, suppress a police interview, object to alleged vouching and improper closing argument, request a unanimity instruction and jury poll, and ensure that an Alford plea was knowing and voluntary. The court also held that cumulative error is not an independent ground for post-conviction relief.

CASE DETAILS

COURT	Oregon Court of Appeals
WRITING FOR THE COURT	Hellman, J.; Ortega, Presiding Judge; Joyce, Judge; Hellman, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	June 10, 2026
DOCKET	A184031
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed a judgment of the Umatilla County Circuit Court denying his petition for post-conviction relief based on alleged inadequate and ineffective assistance of trial counsel.
STANDARD OF REVIEW	The court reviewed the post-conviction court's decision for legal error. Findings of historical fact supported by evidence in the record were binding on appeal.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brett George Kleng v. Erin Reyes, Superintendent, Two Rivers Correctional Institution

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial counsel provided constitutionally inadequate and ineffective assistance by failing to move for a judgment of acquittal on the forcible-compulsion element of first-degree unlawful sexual penetration and first-degree sexual abuse.
2. Whether trial counsel was ineffective for failing to move to suppress the entirety of Kleng's police interview.
3. Whether trial counsel was ineffective for failing to object to alleged vouching testimony concerning the victim's truthfulness and police statements during the interview.
4. Whether trial counsel was ineffective for failing to object to the prosecutor's closing argument as an improper comment on Kleng's decision not to testify and as an improper propensity argument.
5. Whether trial counsel was ineffective for failing to request a unanimity instruction and a jury poll.
6. Whether trial counsel was ineffective for failing to ensure that Kleng's Alford plea was knowing, voluntary, and intelligent.
7. Whether the cumulative effect of alleged trial errors provided an independent basis for post-conviction relief.

HOLDINGS

1. A post-conviction petitioner alleging ineffective assistance based on counsel's failure to file a motion must show that counsel unreasonably assessed the motion's strategic value or failed to understand existing law supporting it, and must establish that the motion would have succeeded and affected the outcome. Kleng failed to show a reasonable likelihood that a judgment of acquittal would have been granted because the evidence supported a finding of forcible compulsion.
2. Counsel was not constitutionally ineffective for declining to suppress the police interview when the decision was an informed strategic choice designed to place Kleng's repeated denials before the jury without requiring him to testify.
3. Counsel was not constitutionally ineffective for allowing statements concerning the victim's truthfulness and detectives' statements in the police interview because counsel pursued an objectively reasonable trial strategy with potential benefits to the defense.
4. Kleng failed to establish ineffective assistance based on counsel's failure to object to the prosecutor's closing argument because the prosecutor did not comment on Kleng's decision not to testify and the challenged other-acts argument was proper for a nonpropensity purpose.
5. The post-conviction court correctly denied relief on Kleng's claim that counsel was ineffective for failing to request a unanimity instruction and jury poll.
6. Kleng failed to establish ineffective assistance concerning his Alford plea because the post-conviction court's credibility findings regarding counsel and Kleng were supported by the record and established

that he could not prove counsel's ineffectiveness.

7. Cumulative error is not an independent ground for post-conviction relief.

KEY QUOTATIONS

“Under the federal standard, a petitioner is required to “show that counsel’s representation fell below an objective standard of reasonableness” and that, as a result, petitioner was prejudiced.” (506)

“To establish prejudice from a trial attorney’s failure to make a motion, a petitioner must first establish that a would-be motion would have succeeded, and then demonstrate that that successful motion would have had a tendency to affect the ultimate outcome of the case.” (507)

“Forcible compulsion is an element of both first-degree unlawful sexual penetration and first-degree sexual abuse.” (507-508)

“Cumulative error is not an independent ground for relief in a post-conviction case.” (511)

FACTUAL BACKGROUND

Kleng was convicted of first-degree unlawful sexual penetration and first-degree sexual abuse based on evidence that, while massaging his 14-year-old stepdaughter's injured leg, he touched her vaginal area under her underwear and penetrated her vagina with his fingers. The victim said no twice, and Kleng stopped only after she pushed his hands away and moved toward the wall. Kleng's other claims concerned counsel's handling of a police interview, alleged vouching testimony, closing argument, jury unanimity and polling, an Alford plea to another count, and alleged cumulative error.

PROCEDURAL HISTORY

Kleng was charged in 2018 with 18 sex-crime counts involving three minor victims and was convicted on the principal counts after trial. He later entered an Alford plea to a count involving another victim that was set for a separate trial. After an unsuccessful direct appeal, he sought post-conviction relief on several ineffective-assistance claims. The circuit court denied relief in a written decision, and the Oregon Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Green v. Franke, 357 Or. 301, 312, 350 P.3d 188 (2015)
- North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)
- State v. B. J. P., 339 Or. App. 134, 138, 566 P.3d 1187 (2025)
- Trujillo v. Maass, 312 Or. 431, 435, 822 P.2d 703 (1991)
- Strickland v. Washington, 466 U.S. 668, 687-88, 692, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

- Montez v. Czerniak, 355 Or. 1, 6-7, 322 P.3d 487, adh'd to as modified on recons., 355 Or. 598, 330 P.3d 595 (2014)
- Barnett v. Brown, 319 Or. App. 257, 258-59, 509 P.3d 748, rev. den., 370 Or. 197 (2022)
- Delgado-Juarez v. Cain, 307 Or. App. 83, 93, 475 P.3d 883 (2020)
- Sutherland v. Fhuere, 332 Or. App. 589, 591-92, 549 P.3d 614, rev. den., 372 Or. 720 (2024)
- State v. Marshall, 350 Or. 208, 227, 253 P.3d 1017 (2011)
- State v. Nygaard, 303 Or. App. 793, 798, 466 P.3d 692, rev. den., 367 Or. 115 (2020)
- State v. Travis, 344 Or. App. 496, 580 P.3d 889 (2025), rev. allowed, 375 Or. 109 (2026)
- Smith v. Kelly, 318 Or. App. 567, 569-70, 508 P.3d 77, rev. den., 370 Or. 822 (2023)
- Mandell v. Miller, 326 Or. App. 807, 808-09, 533 P.3d 815, rev. den., 371 Or. 476 (2023)
- Perkins v. Fhuere, 332 Or. App. 290, 301, 549 P.3d 25 (2024)
- Vega-Arrieta v. Blewett, 331 Or. App. 416, 428, 545 P.3d 746, rev. den., 372 Or. 763 (2024)

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