

SUPREME COURT OF GEORGIA

Adamson v. Sanders, 279 Ga. 187

611 S.E.2d 44 (2005) · No. S05A0544 · Decided March 28, 2005

SUMMARY

The Supreme Court of Georgia affirmed the grant of Milford Lee Sanders's habeas corpus petition following his convictions for failure to stop at a stop sign and first-degree vehicular homicide by reckless driving. The court held that the judgment had to stand because the appellant failed to challenge one independent basis for habeas relief: ineffective assistance based on counsel's failure to timely request a lesser-included-offense instruction. The court also noted that the appellant relied on a transcript that was not included in the appellate record.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	March 28, 2005
DOCKET	S05A0544
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the habeas corpus court's grant of Milford Lee Sanders's petition for habeas corpus. The Supreme Court of Georgia affirmed.
STANDARD OF REVIEW	Appellate review is limited to errors enumerated on appeal; when the record omits proof necessary to resolve an alleged error, the appellate court must assume the lower court's judgment was correct and affirm.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Adamson v. Sanders

TOPICS

- state post-conviction relief
- habeas corpus
- ineffective assistance
- jury instructions
- appellate procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether the habeas corpus judgment granting Sanders relief could stand because the State failed to enumerate as error one independent ruling that Sanders's Sixth Amendment right to effective assistance of counsel was violated when trial counsel failed to timely move for a jury instruction on the lesser included offense of second-degree vehicular homicide.
2. Whether the State's other enumerated challenges could warrant reversal when the transcript relied upon to support those challenges was not included in the appellate record.

HOLDINGS

1. When an appellant fails to enumerate as error an independent ruling that supports the judgment below, the appellate court will not consider that ruling's validity and the judgment must stand.
2. The burden is on the party alleging error to demonstrate it from the appellate record; when necessary proof is omitted, the appellate court must assume the judgment below was correct and affirm.

KEY QUOTATIONS

"Inasmuch as appellant utterly failed to challenge this ruling as error, the judgment must stand." (45)

"Matters not enumerated as error will not be considered on appeal." (45)

"It is well established that the burden is on the party alleging error to show it by the record and that where the proof necessary for determination of the issues on appeal is omitted from the record, an appellate court must assume that the judgment below was correct and affirm." (45)

FACTUAL BACKGROUND

Milford Lee Sanders ran a stop sign on a rainy night, crossed four lanes of highway, and collided with another vehicle. Karen Cain, a passenger in the other vehicle, died from her injuries. A jury convicted Sanders of failure to stop at a stop sign and first-degree vehicular homicide by reckless driving, and he was sentenced to ten years in prison and five years of probation.

PROCEDURAL HISTORY

Sanders was convicted by a jury of failure to stop at a stop sign and first-degree vehicular homicide by reckless driving and received a sentence of ten years in prison followed by five years of probation. The habeas corpus court granted relief on multiple independent grounds, including an inadequate opportunity to litigate constitutional claims concerning a breathalyzer test and several instances of ineffective assistance of trial counsel. On appeal, the State failed to challenge one independent ground: counsel's failure to timely move for a jury instruction on the lesser included offense of second-degree vehicular homicide. The Supreme Court affirmed because that unchallenged ground independently required the judgment to stand.

DISPOSITION

affirmed

CASES CITED

- Lee v. State, 265 Ga. 112(8), 454 S.E.2d 761 (1995)
- Rider v. State, 226 Ga. 14(2), 172 S.E.2d 318 (1970)
- Enchanted Valley RV Park Resort v. Weese, 241 Ga. App. 415, 417(1), 526 S.E.2d 124 (1999)
- Bennett v. Exec. Benefits, Inc., 210 Ga. App. 429, 436 S.E.2d 544 (1993)
- Cooper v. State, 277 Ga. 282, 291, 587 S.E.2d 605 (2003)

OPINION

THOMPSON, J.

611 S.E.2d 44 (2005) 279 Ga. 187 ADAMSON v. SANDERS. No. S05A0544. Supreme Court of Georgia. March 28, 2005. John Gray Conger, Dist. Atty., Robert Hal Sandwich, Jr., Asst. Dist. Atty., for Appellant. Wystan Brennan Getz, for Oakhurst Law Group, LLC, Decatur, for Appellee. THOMPSON, Justice. This appeal arises from the grant of Milford Lee Sanders' petition for habeas corpus.

We affirm the judgment of the habeas corpus court. Milford Lee Sanders ran a stop sign on a rainy night, crossed four lanes of highway, and collided with another car. Karen Cain, the passenger in the other car, died as a result of her injuries. A jury found Sanders guilty of failure to stop at a stop sign and first degree vehicular homicide by reckless driving.

He was sentenced to ten years in prison and five years probation. The habeas corpus court granted Sanders' petition on a number of grounds, any one of which would have been sufficient to warrant relief. The habeas corpus court first held that relief was appropriate because Sanders lacked a full and fair opportunity to litigate his federal and state constitutional claims with regard to a breathalyzer test obtained in violation of his constitutional rights.[1] The habeas court also held that Sanders' Sixth Amendment right to effective assistance of *45 counsel was violated in four different ways.

In this regard, the habeas corpus court found that Sanders' counsel at trial was ineffective because he (1) failed to submit the proper jury charge on the accident defense, leaving the jury confused about who had the burden of proof on that defense, (2) failed to timely submit a charge, in writing, on the lesser included offense of second degree vehicular homicide, (3) failed to object when the trial judge erroneously charged the jury on the element of intent, and (4) failed to file a special demurrer to a faulty indictment.

In its enumeration of errors and brief, appellant seeks to reverse the judgment below by attacking most, but not all of the habeas corpus court's conclusions. One of the bases of the habeas corpus court's judgmentthat Sanders' Sixth Amendment right to counsel was violated when his attorney failed to timely move to instruct the jury on a lesser included offensewas not attacked at all.

Inasmuch as appellant utterly failed to challenge this ruling as error, the judgment must stand. Matters not enumerated as error will not be considered on appeal. See *Lee v. State*, 265 Ga. 112(8), 454 S.E.2d 761 (1995); *Rider v. State*, 226 Ga. 14(2), 172 S.E.2d 318 (1970).

Although it is therefore unnecessary to reach the errors appellant did enumerate, we point out that appellant's support for those enumerated errors relied heavily upon citations to the transcript, which was not made a part of the record on appeal. "It is well established that the burden is on the party alleging error to show it by the record and that where the proof necessary for determination of the issues on appeal is omitted from the record, an appellate court must assume that the judgment below was correct and affirm."

Enchanted Valley RV Park Resort v. Weese, 241 Ga.App. 415, 417(1), 526 S.E.2d 124 (1999) (quoting *Bennett v. Exec. Benefits, Inc.*, 210 Ga.App. 429, 436 S.E.2d 544 (1993)). Judgment affirmed. All the Justices concur. NOTES [1] See generally *Cooper v. State*, 277 Ga. 282, 291, 587 S.E.2d 605 (2003).