

SUPREME COURT OF GEORGIA

McCarthy v. State

301 Ga. 803 (2017) · Decided August 28, 2017

SUMMARY

The Supreme Court of Georgia affirmed the denial of Rodney McCarthy’s request for an out-of-time appeal. The court held that his claims were barred by collateral estoppel because they had previously been litigated in habeas proceedings and earlier motions. The court also held that the later-discovered loss of portions of the trial transcript did not cause his failure to pursue a timely appeal.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Boggs, Justice
JURISDICTION	Georgia
DECIDED	August 28, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	McCarthy appealed the trial court's denial of his amended extraordinary motion for new trial and request for an out-of-time appeal.
STANDARD OF REVIEW	The grant or denial of a motion for an out-of-time appeal is reviewed for abuse of discretion. Issues not raised in the trial court are not considered on appeal.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential
PARTIES	Rodney McCarthy v. State

TOPICS

- appellate procedure
- appellate jurisdiction
- preservation of error
- post-conviction relief
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure
- post-conviction relief

QUESTIONS PRESENTED

1. Whether McCarthy's request for an out-of-time appeal was barred by collateral estoppel because the same claims had been resolved adversely in his prior habeas and post-conviction proceedings.
2. Whether the unavailability of portions of the trial transcript independently entitled McCarthy to an out-of-time appeal.

HOLDINGS

1. McCarthy's request for an out-of-time appeal was barred by collateral estoppel because the claims concerning the denial of his right to a direct appeal and ineffective assistance of counsel had been raised and resolved adversely in earlier proceedings.
2. The later-discovered absence of portions of the trial transcript did not entitle McCarthy to an out-of-time appeal because he had already failed to initiate an appeal years before the transcript was found to be unavailable and could not show harm resulting from its absence.

KEY QUOTATIONS

“out-of-time appeals are designed to address the constitutional concerns that arise when a criminal defendant is denied his first appeal of right because the counsel to which he was constitutionally entitled to assist him in that appeal was professionally deficient in not advising him to file a timely appeal and that deficiency caused prejudice.” (805-806)

“The allegations in McCarthy’s most recent request for an out-of-time appeal are all claims that were raised in earlier pleadings and resolved adversely to his position.” (806)

“The absence of portions of the transcript at a much later time did not “effectively deprive[] Appellant of his right to appeal,” as McCarthy contends.” (807)

FACTUAL BACKGROUND

McCarthy was convicted in 1999 of malice murder, possession of a firearm during commission of a crime, concealing the death of another, and tampering with evidence. Although represented by retained counsel, he did not file a motion for new trial or notice of appeal, and the habeas court later found that both the trial court and counsel advised him of his appellate rights and that his failure to appeal was his own inaction. Years later, portions of the trial transcript could not be located, but McCarthy did not seek the transcript until approximately five years after his conviction. He subsequently sought an out-of-time appeal, asserting that his constitutional claims had not previously been decided and that the missing transcript prevented a timely appeal.

PROCEDURAL HISTORY

McCarthy was convicted in 1999 of malice murder and related offenses. He did not file a timely motion for new trial or notice of appeal, and a habeas court later rejected his ineffective-assistance claim, finding that his failure to pursue a direct appeal resulted from his own inaction. After several unsuccessful post-conviction filings, including a 2007 appeal dismissed for failure to file an application for discretionary appeal, McCarthy filed another request for an out-of-time appeal in 2015. The trial court denied the request, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Waller v. State, 299 Ga. 619, 621-622 (791 SE2d 67) (2016)
- Sessions v. State, 293 Ga. 33, 34 (743 SE2d 391) (2013)
- Nally v. Bartow County Grand Jurors, 280 Ga. 790, 791 (3) (633 SE2d 337) (2006)
- Earnest v. State, 262 Ga. 494, 495 (1) (422 SE2d 188) (1992)
- Sheard v. State, 300 Ga. 117, 119-120 (2) (793 SE2d 386) (2016)

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