

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Zackery W. v. Donnie Ames, Superintendent

No. 19-0173 (Jackson County 15-C-59) (W. Va. Feb. 7, 2020) · No. No. 19-0173 · Decided February 7, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Circuit Court of Jackson County's denial of Zackery W.'s petition for a post-conviction writ of habeas corpus. The court held that petitioner failed to establish deficient performance under the Strickland/Miller standard based on claims concerning competency, psychological records, sentencing advice, and plea discussions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins
JURISDICTION	West Virginia
DECIDED	February 7, 2020
DOCKET	No. 19-0173
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Jackson County's denial of his petition for a post-conviction writ of habeas corpus, alleging ineffective assistance of trial counsel.
STANDARD OF REVIEW	The final order and ultimate disposition in a habeas action are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
PRECEDENTIAL VALUE	Memorandum decision; the source metadata identifies the opinion as published.
PARTIES	Zackery W. v. Donnie Ames, Superintendent, Mt. Olive Correctional Complex

TOPICS

state post-conviction relief

habeas corpus

ineffective assistance

right to counsel

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to obtain petitioner's psychiatric, psychological, or educational records and thereby failing to establish that petitioner was incompetent to stand trial.
2. Whether trial counsel provided ineffective assistance by inadequately explaining indeterminate sentencing, life with mercy, plea offers, and the consequences of proceeding to trial.
3. Whether the habeas court properly rejected further litigation of petitioner's competency-assessment claim under res judicata because the issue had been fully litigated on direct appeal.

HOLDINGS

1. Petitioner failed to establish deficient performance under the first prong of the Strickland/Miller test. He did not show that the allegedly omitted records existed or identify any specific psychiatric or psychological record counsel should have obtained, and the existing competency evaluation, counsel's testimony, and petitioner's conduct supported the conclusion that he was competent to stand trial.
2. Petitioner failed to show that counsel's performance was deficient. The evidence showed that counsel explained the charges, penalties, plea offer, and possible consequences of trial, while petitioner acknowledged understanding and independently rejected plea agreements.
3. The habeas court correctly concluded that further litigation of the adequacy of petitioner's competency assessment was barred because petitioner had raised and fully litigated that issue on direct appeal.
4. The court did not need to address prejudice because petitioner failed to establish deficient performance.

KEY QUOTATIONS

"In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a de novo review." (at 2)

"Claims of ineffective assistance of counsel are governed by the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), which states that, in order to prevail on a claim of ineffective assistance of counsel, petitioner must show that "(1) [c]ounsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." (at 3)

FACTUAL BACKGROUND

Petitioner was arrested after allegations that he repeatedly sexually assaulted two young girls whom he sometimes babysat. Before trial, a forensic psychiatric evaluation concluded that he was competent to stand trial, and the trial court found him competent after a hearing. A jury convicted him of two counts of first-degree sexual assault, eleven counts of first-degree sexual abuse, and thirteen counts of sexual abuse by a person in a position

of trust to a child. In post-conviction proceedings, petitioner claimed trial counsel was ineffective for failing to investigate his intellectual functioning and for inadequately explaining plea offers and indeterminate sentencing.

PROCEDURAL HISTORY

Petitioner was convicted by a jury of multiple sexual offenses and received consecutive sentences. This Court affirmed his convictions on direct appeal. Petitioner later filed a habeas petition, amended it to assert fifteen grounds for relief, and received an omnibus hearing. The circuit court denied habeas relief on January 25, 2019, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- State v. Zachary W., No. 13-1177, 2014 WL 4662486 (W. Va. Sept. 19, 2014)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- State ex rel. Franklin v. McBride, 226 W. Va. 375, 701 S.E.2d 97 (2009)
- Losh v. McKenzie, 166 W. Va. 762, 765, 277 S.E.2d 606, 609 (1981)
- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State v. Chapman, 210 W. Va. 292, 557 S.E.2d 346 (2001)
- State v. Sanders, 209 W. Va. 367, 379, 549 S.E.2d 40, 52 (2001)
- State ex rel. Daniel v. Legursky, 195 W. Va. 314, 465 S.E.2d 416 (1995)