

SUPREME COURT OF MISSOURI

State ex rel. Howard J. Verweire v. Steven Moore

211 S.W.3d 89 (Mo. banc 2006) · No. SC 87445 · Decided January 30, 2007

SUMMARY

The Supreme Court of Missouri granted habeas corpus relief to Howard J. Verweire, holding that the record did not establish a factual basis for his guilty plea to first-degree assault. The court determined that his conduct and threats did not demonstrate the requisite intent or substantial step toward causing serious physical injury, found him actually innocent of that offense, vacated the conviction, and permitted him to withdraw his plea.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Missouri                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Stephen N. Limbaugh, Jr.                                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Missouri                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | January 30, 2007                                                                                                                                                                                                                                                                                                                |
| DOCKET                | SC 87445                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Petitioner sought an original writ of habeas corpus from the Supreme Court of Missouri after pleading guilty to first-degree assault and unlawful use of a weapon. He claimed actual innocence of first-degree assault and argued that the plea lacked a factual basis and therefore was not knowingly and voluntarily entered. |
| STANDARD OF REVIEW    | The court reviewed the plea-hearing record and the evidence before the special master to determine whether the record established a constitutional violation, actual innocence, and a sufficient factual basis for the guilty plea.                                                                                             |
| PRECEDENTIAL VALUE    | Published en banc opinion of the Supreme Court of Missouri; binding Missouri precedent.                                                                                                                                                                                                                                         |
| PARTIES               | Howard J. Verweire v. Steven Moore, Superintendent, Western Missouri Correctional Center                                                                                                                                                                                                                                        |

TOPICS

habeas corpus

actual innocence

post-conviction relief

due process

criminal procedure

## PRACTICE AREAS

criminal procedure

habeas corpus

post-conviction relief

constitutional law

criminal law

## QUESTIONS PRESENTED

1. Whether habeas corpus relief was available despite the absence of a direct appeal or Rule 24.035 proceeding when the petitioner claimed actual innocence and a constitutional violation.
2. Whether Verweire's conduct constituted a substantial step, accompanied by the specific intent to cause serious physical injury, sufficient to support first-degree assault.
3. Whether the absence of a factual basis for the guilty plea rendered the plea unknowing and involuntary in violation of due process.

## HOLDINGS

1. Habeas corpus relief is available, even without a direct appeal or Rule 24.035 proceeding, when the petitioner demonstrates a manifest injustice or miscarriage of justice by showing that a constitutional violation probably resulted in the conviction of an actually innocent person.
2. A threat to cause serious physical injury, even when made while the defendant possesses the apparent ability to carry it out, does not necessarily constitute an attempt to commit first-degree assault. The State must establish a purposeful intent to cause serious physical injury and conduct constituting a substantial step strongly corroborative of that intent.
3. Because the evidence did not establish the mental element of first-degree assault, there was no factual basis for the guilty plea; consequently, the plea was not knowingly and voluntarily entered and the assault conviction could not stand.

## KEY QUOTATIONS

*"Habeas corpus relief is available even in the absence of a direct appeal or a Rule 24.035 post-conviction relief motion where petitioner can demonstrate 'manifest injustice or miscarriage of justice' by showing that 'a constitutional violation has probably resulted in the conviction of one who is actually innocent.'"* (91)

*"a mere threat with the ability to carry out that threat does not necessarily constitute an attempt to commit a crime."* (93)

*"this Court holds that Verweire is actually innocent of the offense, that there was no factual basis for the guilty plea, and that his plea was not knowingly and voluntarily entered."* (93)

## FACTUAL BACKGROUND

Verweire confronted Alex Crompton at an arcade after staring at a fourteen-year-old girl, pulled a semiautomatic pistol, grabbed Crompton by the neck, jabbed the pistol into Crompton's side and cheek, and threatened to shoot him. He left without pulling the trigger or attempting to fire, and police later arrested him with the loaded pistol.

Although charged with first-degree assault based on an alleged attempt to cause serious physical injury, he pleaded guilty without a plea bargain and was sentenced to ten years on that count.

#### PROCEDURAL HISTORY

Verweire pleaded guilty in the Circuit Court of Taney County and received concurrent terms of ten years for first-degree assault and five years for unlawful use of a weapon. He pursued neither a direct appeal nor relief under Rule 24.035. His habeas petition in the Circuit Court of DeKalb County was denied, and the Court of Appeals, Western District, later quashed a preliminary writ after a special master took evidence. The Supreme Court of Missouri issued its own writ, vacated the assault conviction, permitted withdrawal of the plea, and remanded for further proceedings on any lesser included offenses.

#### DISPOSITION

vacated

#### REMAND INSTRUCTIONS

The judgment of conviction on Count I was vacated, Verweire was permitted to withdraw his plea to that count, and he was remanded to the custody of the Taney County sheriff to await further proceedings on any lesser included offenses.

#### CASES CITED

- Verweire v. Moore, 168 S.W.3d 518 (Mo. App. 2005)
- Clay v. Dormire, 37 S.W.3d 214, 217 (Mo. banc 2000)
- McCarthy v. United States, 394 U.S. 459, 466 (1969)
- Whalen, 49 S.W.3d at 186-187 & n.5
- State v. Hineman, 14 S.W.3d 924, 927-28 (Mo. banc 1999)
- State v. Unverzagt, 721 S.W.2d 786, 788 (Mo. App. 1986)
- In re J R N, 687 S.W.2d 655, 656 (Mo. App. 1985)
- State v. White, 798 S.W.2d 694, 697 (Mo. banc 1990)