

SUPREME COURT OF NEBRASKA

State of Nebraska v. Michael J. Glover

278 Neb. 795 (Neb. 2009) · No. S-09-156 · Decided October 30, 2009

SUMMARY

The Supreme Court of Nebraska affirmed the denial of Michael J. Glover's motion for postconviction relief following an evidentiary hearing. Glover claimed ineffective assistance of trial counsel based on counsel's investigation of a codefendant's recantation, forensic evidence, sentencing advice, and failure to withdraw his no contest pleas. The court held that Glover failed to establish deficient performance or prejudice under Strickland v. Washington.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 30, 2009
DOCKET	S-09-156
DISPOSITION	affirmed
PROCEDURAL POSTURE	Glover appealed the Douglas County District Court's denial of his motion for postconviction relief after an evidentiary hearing.
STANDARD OF REVIEW	Postconviction findings are reviewed for clear error. Ineffective-assistance claims present mixed questions of law and fact: factual findings are reviewed for clear error, while counsel's performance and prejudice under Strickland are reviewed independently.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Michael J. Glover v. State of Nebraska

TOPICS

- post-conviction relief
- ineffective assistance
- plea bargaining
- standard of review
- appellate procedure

PRACTICE AREAS

- criminal postconviction relief
- ineffective assistance of counsel
- plea challenges
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by denying Glover postconviction relief after an evidentiary hearing.
2. Whether trial counsel provided ineffective assistance by inadequately investigating a codefendant's recantation and potentially favorable physical evidence.
3. Whether alleged ineffective assistance rendered Glover's no-contest pleas unknowing, involuntary, or unintelligent.
4. Whether Glover established prejudice by showing a reasonable probability that, but for counsel's alleged errors, he would have insisted on going to trial.

HOLDINGS

1. Glover's claim that he was denied an evidentiary hearing was without merit because he received an evidentiary hearing after the Nebraska Supreme Court remanded the matter.
2. A defendant seeking postconviction relief based on ineffective assistance must show that counsel's performance was deficient and that the deficient performance prejudiced the defense under the two-pronged Strickland test.
3. When a conviction is based on a guilty or no-contest plea, prejudice is established only if the defendant shows a reasonable probability that, but for counsel's errors, the defendant would have insisted on going to trial rather than entering the plea.
4. Glover failed to establish either deficient performance or prejudice because the district court found that counsel adequately investigated the recantation and physical evidence, properly advised Glover about possible penalties, and that Glover did not show he would have withdrawn his pleas and proceeded to trial.

KEY QUOTATIONS

“In order to establish a right to postconviction relief based on a claim of ineffective assistance of counsel at trial or on direct appeal, the defendant has the burden, in accordance with Strickland, to show that counsel's performance was deficient; that is, counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law in the area.” (774 N.W.2d at 252)

“When reviewing a claim of ineffective assistance of counsel, an appellate court will not second-guess reasonable strategic decisions by counsel.” (774 N.W.2d at 253)

FACTUAL BACKGROUND

Glover was charged with first degree murder and use of a deadly weapon, but pleaded no contest to second degree murder, use of a deadly weapon to commit a felony, and robbery. He later alleged that trial counsel inadequately investigated a codefendant's recantation and potentially favorable gunshot-residue and blood-spatter evidence, failed to advise him adequately about penalties, and failed to withdraw his pleas. Trial counsel testified that he investigated the recantation and physical evidence, advised Glover about the applicable penalties, and was never asked to withdraw the pleas.

PROCEDURAL HISTORY

Glover pleaded no contest to second degree murder, use of a deadly weapon to commit a felony, and robbery. After his direct appeal was summarily affirmed, he sought postconviction relief, alleging ineffective assistance of trial counsel. The district court initially denied relief without an evidentiary hearing, but the Nebraska Supreme Court reversed and remanded for such a hearing in *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008). Following the evidentiary hearing, the district court again denied relief, and Glover appealed.

DISPOSITION

affirmed

CASES CITED

- *State v. Glover*, 276 Neb. 622, 756 N.W.2d 157 (2008)
- *State v. Caddy*, 262 Neb. 38, 628 N.W.2d 251 (2001)
- *State v. Hudson*, 277 Neb. 182, 761 N.W.2d 536 (2009)
- *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- *State v. Lopez*, 274 Neb. 756, 743 N.W.2d 351 (2008)
- *State v. Barnes*, 272 Neb. 749, 724 N.W.2d 807 (2006)
- *State v. Poindexter*, 277 Neb. 936, 766 N.W.2d 391 (2009)
- *State v. Rhodes*, 277 Neb. 316, 761 N.W.2d 907 (2009)