

SUPREME COURT OF TENNESSEE

Jerry Neal Carpenter v. State of Tennessee

Carpenter · No. E2001-01732-SC-R11-PC · Decided January 13, 2004

SUMMARY

This concurring opinion addresses Jerry Neal Carpenter’s claim that appellate counsel provided ineffective assistance by failing to challenge the trial court’s refusal to instruct the jury on lesser-included offenses. Chief Justice Frank F. Drowota concludes that counsel’s decision was reasonable under the law applicable at the time of the appeal and agrees that Carpenter failed to establish deficient performance.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Frank F. Drowota, III, Chief Justice
JURISDICTION	Tennessee
DECIDED	January 13, 2004
DOCKET	E2001-01732-SC-R11-PC
DISPOSITION	other
PROCEDURAL POSTURE	Carpenter appealed by permission from the Tennessee Court of Criminal Appeals in a post-conviction proceeding alleging ineffective assistance of appellate counsel.
STANDARD OF REVIEW	Ineffective-assistance claims require proof of deficient performance and prejudice. Appellate review is de novo, with a presumption of correctness attached to the trial court’s factual findings.
PRECEDENTIAL VALUE	Published concurring opinion; the concurrence is persuasive reasoning, while the majority disposition controls.
PARTIES	Jerry Neal Carpenter v. State of Tennessee

TOPICS

[ineffective assistance](#) [post-conviction relief](#) [appellate procedure](#) [criminal procedure](#) [standard of review](#)

PRACTICE AREAS

[criminal procedure](#) [post-conviction relief](#) [ineffective assistance](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Carpenter established deficient performance or prejudice sufficient to support an ineffective-assistance-of-appellate-counsel claim.
2. Whether appellate counsel's decision not to challenge the trial court's refusal to instruct on lesser-included offenses was reasonable under the law existing at the time of the appeal.

HOLDINGS

1. Carpenter failed to establish ineffective assistance of appellate counsel because he did not establish deficient performance.
2. Any legal confusion would have weighed against, rather than in favor of, finding counsel's decision reasonable; however, the concurrence concludes that the law was clear under King at the relevant time.

KEY QUOTATIONS

“Courts evaluating such claims must determine: (1) whether counsel’s performance was deficient; and (2) whether the defense was prejudiced by the alleged deficient performance.” (-2)

“Thus, I concur in the majority’s conclusion that Carpenter has failed to establish his claim of ineffective assistance of appellate counsel but disagree with the majority’s analysis for the reasons herein explained.” (-5)

FACTUAL BACKGROUND

Carpenter was convicted in a prosecution based entirely on circumstantial evidence concerning a murder. Trial counsel pursued an acquittal by presenting innocent explanations for the evidence and impeaching key prosecution witnesses, rather than arguing that Carpenter was guilty only of a lesser-included offense. Although the trial court refused to instruct the jury on lesser-included offenses, appellate counsel elected not to challenge that ruling on appeal.

PROCEDURAL HISTORY

The Criminal Court for Knox County, Criminal Case No. 47388, denied post-conviction relief. The Court of Criminal Appeals considered the case, and the Tennessee Supreme Court granted permission to appeal. The concurrence agrees with the judgment rejecting Carpenter's ineffective-assistance claim but disagrees with the majority's analysis concerning counsel's decision not to challenge the refusal to instruct on lesser-included offenses.

DISPOSITION

other

CASES CITED

- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- King v. State, 989 S.W.2d 319, 323 (Tenn. 1999)

- Fields v. State, 40 S.W.3d 450, 457 (Tenn. 2001)
- State v. King, 718 S.W.2d 241, 245 (Tenn. 1986)
- State v. Mellons, 557 S.W.2d 497 (Tenn. 1977)
- Johnson v. State, 531 S.W.2d 558, 559 (Tenn. 1975)
- State v. Wright, 618 S.W.2d 310, 315 (Tenn. Crim. App. 1981)
- Campbell v. State, 904 S.W.2d 594, 596-97 (Tenn. 1995)
- Cooper v. State, 849 S.W.2d 744, 747 (Tenn. 1993)
- Jones v. Barnes, 463 U.S. 745, 751 (1983)
- State v. Vann, 976 S.W.2d 93, 100-01 (Tenn. 1998)
- State v. Boyd, 797 S.W.2d 589, 593 (Tenn. 1990)
- Miller v. State, 54 S.W.3d 743, 747 n.6 (Tenn. 2001)