

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Darnell Carlton Bouie v. Donnie Ames

No. 20-0660 (Harrison County 15-C-433-3) · No. No. 20-0660 (Harrison County 15-C-433-3) · Decided August 27, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of Darnell Carlton Bouie's petition for a writ of habeas corpus. The court rejected claims of ineffective assistance of trial counsel concerning venue, an alibi defense, footwear evidence, witness cross-examination, and use of a grand jury transcript. It also held that the concerted-action jury instruction was supported by the evidence and that no plain error or ineffective assistance resulted from the failure to object.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Evan H. Jenkins; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton
JURISDICTION	West Virginia
DECIDED	August 27, 2021
DOCKET	No. 20-0660 (Harrison County 15-C-433-3)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Harrison County's denial of his petition for a writ of habeas corpus challenging convictions for felony murder and conspiracy to commit burglary.
STANDARD OF REVIEW	A circuit court's final order and ultimate disposition in a habeas corpus action are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo. Unobjected-to jury instructions may be challenged only through plain error and/or ineffective assistance of counsel.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law or prejudicial error.
PARTIES	Darnell Carlton Bouie v. Donnie Ames, Superintendent, Mt. Olive Correctional Complex

TOPICS

state post-conviction relief habeas corpus ineffective assistance jury instructions appellate procedure

PRACTICE AREAS

post-conviction relief criminal procedure ineffective assistance of counsel jury instructions
appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to investigate and seek a change of venue based on allegedly prejudicial pretrial publicity.
2. Whether trial counsel was ineffective for failing to investigate an alibi defense.
3. Whether trial counsel was ineffective for failing to present a defense shoe expert.
4. Whether trial counsel was ineffective for inadequately cross-examining certain prosecution witnesses and failing to use the grand jury transcript.
5. Whether the circuit court erred by rejecting Bouie's challenge to a concerted-action jury instruction as unsupported by the evidence, under plain-error or ineffective-assistance review.

HOLDINGS

1. Bouie failed to substantiate that counsel's investigation of pretrial publicity was inadequate or that the publicity created such fixed opinions among jurors that an impartial trial was impossible.
2. Counsel was not ineffective for failing to investigate an alibi because Bouie's own admission placed him at the victim's apartment complex and the record contained no evidence that he was elsewhere during the shooting.
3. Bouie failed to establish ineffective assistance from counsel's decision not to call a defense shoe expert because the State's witnesses provided substantially the relevant testimony and did not connect the exemplar shoes to Bouie or the crime with certainty.
4. Bouie failed to show prejudice from the alleged deficiencies in counsel's cross-examinations or failure to use the grand jury transcript.
5. The concerted-action instruction was supported by the evidence, and Bouie showed neither plain error nor ineffective assistance arising from the failure to object to it.

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)

“In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in Strickland v. Washington” (at 3)

“A trial court’s instructions to the jury must be . . . supported by the evidence.” (at 5)

“Miller held that plain error consists of: “(1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings.”” (at 5)

FACTUAL BACKGROUND

Bouie was involved with Payne and three other men in an attempted nighttime burglary of the victim's apartment. During the confrontation, Payne shot and killed the victim. Evidence at Bouie's trial included Bouie's statements that he was not the shooter but had been at the apartment complex, jail telephone calls referring to Payne and the evidence, eyewitness testimony placing Bouie and Payne together, and demonstrative shoe evidence. Bouie was convicted of felony murder and conspiracy to commit burglary, and later challenged his convictions through habeas proceedings.

PROCEDURAL HISTORY

Bouie and Ennis Charles Payne were indicted for murder and conspiracy to commit burglary. Bouie was tried separately, convicted on both counts, and sentenced to life with the possibility of parole for felony murder and one to five years for conspiracy. The Supreme Court of Appeals of West Virginia affirmed his convictions in *State v. Bouie*, 235 W. Va. 709, 776 S.E.2d 606 (2015). Bouie filed a habeas petition in 2015, later amended it, and raised claims including ineffective assistance of counsel and improper jury instructions. After an omnibus hearing, the circuit court denied relief on July 31, 2020. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *State v. Bouie*, 235 W. Va. 709, 776 S.E.2d 606 (2015)
- *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- *Anstey v. Ballard*, 237 W. Va. 411, 787 S.E.2d 864 (2016)
- *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- *State ex rel. Daniel v. Legursky*, 195 W. Va. 314, 465 S.E.2d 416 (1995)
- *State ex rel. Vernatter v. Warden, West Virginia Penitentiary*, 207 W. Va. 11, 528 S.E.2d 207 (1999)
- *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994)
- *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- *State v. LaRock*, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- *State v. Lilly*, 194 W. Va. 595, 461 S.E.2d 101 (1995)