

SUPREME COURT OF CONNECTICUT

Hickey v. Comm'r of Corr., 329 Conn. 605

188 A.3d 715 (2018) · Decided July 31, 2018

SUMMARY

The Connecticut Supreme Court reviewed an ineffective-assistance-of-counsel claim arising from counsel's failure to request contemporaneous and final limiting instructions concerning prior, uncharged sexual misconduct evidence. The court held that, even assuming deficient performance, the petitioner failed to establish prejudice under Strickland because the overall charge and trial evidence sufficiently protected against an unreliable conviction. The court reversed the Appellate Court insofar as it remanded for further proceedings on the trial-counsel claim and directed judgment denying that claim.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Robinson, J.
JURISDICTION	Connecticut
DECIDED	July 31, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commissioner of Correction brought a certified appeal from the Appellate Court's judgment reversing in part the habeas court's judgment and remanding for further proceedings on whether trial counsel's deficient performance prejudiced the petitioner.
STANDARD OF REVIEW	Ineffective-assistance claims present mixed questions of law and fact subject to plenary review. The prejudice inquiry requires review of the totality of the evidence and asks whether the petitioner demonstrated a reasonable probability that the result would have been different absent counsel's errors.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Commissioner of Correction v. Denis Hickey

TOPICS

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PRACTICE AREAS

state post-conviction relief

criminal procedure

constitutional law

ineffective assistance of counsel

evidence

QUESTIONS PRESENTED

1. Whether the petitioner was prejudiced under Strickland by trial counsel's failure to request a contemporaneous limiting instruction concerning prior uncharged sexual misconduct.
2. Whether the petitioner was prejudiced by trial counsel's failure to request final-charge language expressly limiting the use of the prior misconduct evidence to propensity.
3. Whether the Appellate Court should have conducted plenary review of the prejudice issue rather than remanding for a new habeas hearing.

HOLDINGS

1. The petitioner failed to establish a reasonable probability that the trial result would have been different if the final charge had expressly used the word propensity. The charge, read as a whole, adequately instructed the jury that the prior misconduct could not alone establish guilt, that the State bore the burden of proving each charged element, and that Hickey was not on trial for the uncharged conduct.
2. Although a contemporaneous instruction should have been given under DeJesus, counsel's failure to request one did not prejudice the petitioner because the final charge adequately limited the use of the prior misconduct evidence and the jury is presumed to follow the court's instructions.
3. When the habeas court's historical factual findings are undisputed and the issue is the legal application of those facts to the prejudice prong, the appellate court should conduct plenary review rather than remand for a new habeas trial.

KEY QUOTATIONS

“Under the two-pronged Strickland test, a defendant can only prevail on an ineffective assistance of counsel claim if he proves that (1) counsel's performance was deficient, and (2) the deficient performance resulted in actual prejudice.” (329 Conn. at 617-18)

“The jury is presumed, in the absence of a fair indication to the contrary, to have followed the court's instructions” (329 Conn. at 623)

“When viewed in the context of all of the evidence offered at trial, the alleged deficient performance in the present case does not establish that it is reasonably likely that there would have been a different result at the petitioner's criminal trial.” (329 Conn. at 624)

FACTUAL BACKGROUND

Hickey was convicted of sexually assaulting his then-girlfriend's five-year-old daughter and of risk of injury to a child. At trial, the court admitted testimony from R.N. concerning Hickey's prior, uncharged sexual misconduct involving R.N. The trial court gave no contemporaneous cautionary instruction, and its final charge stated that the evidence could be considered for any relevant matter but did not expressly use the word propensity. The

State's case also included physical evidence, evidence of the victim's post-traumatic stress, and repeated spontaneous disclosures to a pediatric nurse-practitioner and forensic medical examiner.

PROCEDURAL HISTORY

Hickey was convicted of first-degree sexual assault and risk of injury to a child. After his conviction was affirmed on direct appeal, he pursued habeas relief alleging ineffective assistance based on counsel's failure to request contemporaneous and propensity-limited instructions concerning prior uncharged sexual misconduct. The habeas court granted relief on the trial-counsel claim, and the Appellate Court concluded that counsel's performance was deficient but remanded for a further prejudice analysis. The Supreme Court of Connecticut held that the Appellate Court should have conducted plenary review and concluded that Hickey failed to prove prejudice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Appellate Court was reversed insofar as it remanded for further proceedings on the ineffective-assistance claim against trial counsel. The case was remanded to the Appellate Court with direction to remand to the habeas court to render judgment denying the amended habeas petition as to that claim. The Appellate Court's judgment was affirmed in all other respects.

CASES CITED

- Hickey v. Commissioner of Correction, 162 Conn. App. 505, 133 A.3d 489 (2016)
- State v. Hickey, 135 Conn. App. 532, 43 A.3d 701 (2012), cert. denied, 306 Conn. 901, 52 A.3d 728 (2012)
- State v. DeJesus, 288 Conn. 418, 953 A.2d 45 (2008)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Gonzalez v. Commissioner of Correction, 308 Conn. 463, 68 A.3d 624 (2013), cert. denied sub nom. Dzurenda v. Gonzalez, 571 U.S. 1045 (2013)
- Davis v. Commissioner of Correction, 319 Conn. 548, 126 A.3d 538 (2015), cert. denied sub nom. Semple v. Davis, 136 S. Ct. 1676 (2016)
- Michael T. v. Commissioner of Correction, 307 Conn. 84, 52 A.3d 655 (2012)
- Taylor v. Commissioner of Correction, 324 Conn. 631, 153 A.3d 1264 (2017)
- State v. Flores, 301 Conn. 77, 17 A.3d 1025 (2011)
- State v. Baltas, 311 Conn. 786, 91 A.3d 384 (2014)
- State v. McKenzie-Adams, 281 Conn. 486, 915 A.2d 822 (2007), cert. denied, 552 U.S. 888 (2007)
- William C. v. Commissioner of Correction, 126 Conn. App. 185, 10 A.3d 115 (2011), cert. denied, 300 Conn. 922, 14 A.3d 1007 (2011)
- Anderson v. Commissioner of Correction, 313 Conn. 360, 98 A.3d 23 (2014), cert. denied sub nom. Anderson v. Semple, 135 S. Ct. 1453 (2015)

- **Gideon v. Wainwright, Gideon v. Wainwright, 372 U.S. 335 (1963)**

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