

SUPREME COURT OF SOUTH CAROLINA

Payne v. State, 355 S.C. 642

586 S.E.2d 857 (2003) · No. No. 25719 · Decided September 22, 2003

SUMMARY

The South Carolina Supreme Court affirmed the denial of Geoffrey Payne’s application for post-conviction relief. The court held that a codefendant’s counsel indirectly commented on Payne’s decision not to testify, satisfying the deficiency prong of the ineffective-assistance analysis, but that Payne was not prejudiced because the evidence of his murder conviction was overwhelming. A separate concurrence agreed with the result but disagreed that the closing argument impermissibly referenced Payne’s silence.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Toal, Chief Justice; Moore, Justice; Waller, Justice; Pleicones, Justice; Burnett, Justice
JURISDICTION	South Carolina
DECIDED	September 22, 2003
DOCKET	No. 25719
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for certiorari review of the dismissal of an application for post-conviction relief alleging ineffective assistance of counsel.
STANDARD OF REVIEW	An ineffective-assistance claim requires proof of deficient performance and resulting prejudice under Strickland v. Washington. The PCR court's factual findings must be upheld if supported by probative evidence in the record.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; majority opinion precedential, with a separate concurrence in result.
PARTIES	Geoffrey R. Payne v. State of South Carolina

TOPICS

- state post-conviction relief
- ineffective assistance
- fifth amendment
- right to counsel
- criminal procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

constitutional law

QUESTIONS PRESENTED

1. Whether a codefendant's counsel indirectly commented on Payne's constitutional right to remain silent by emphasizing the codefendant's willingness to testify.
2. Whether Payne's counsel rendered ineffective assistance by failing to object to that comment.
3. Whether the failure to object prejudiced Payne in light of the evidence against him.

HOLDINGS

1. A codefendant's counsel is subject to the same prohibition against direct or indirect commentary on a defendant's right to remain silent as the State and the court. The closing argument indirectly referred to Payne's decision to remain silent.
2. Payne established deficient performance because his counsel failed to object to the improper indirect comment on Payne's constitutional right not to testify.
3. Payne was not prejudiced by counsel's failure to object because overwhelming evidence established that he murdered the victim.

KEY QUOTATIONS

"In our view, Strickler's comment, 'you heard nothing but Joe Kelsey because Joe wanted and was willing to sit right up there and look y'all in your eyes and tell you the answer to the only questions that matter,' does indirectly refer to the fact that Payne elected to remain silent." (645)

"Therefore, we hold that Payne was not prejudiced by his counsel's failure to object to Strickler's reference to Payne's refusal to testify." (646)

FACTUAL BACKGROUND

Payne was convicted of murdering a victim and conspiring to do so with codefendants Joseph Kelsey and Jammie Lee. During closing argument, Kelsey's counsel emphasized that Kelsey had been willing to testify and stated that the victim had been killed by Payne, which the majority viewed as an indirect reference to Payne's decision not to testify. Payne's counsel did not object. The evidence against Payne included testimony that he strangled and struck the victim, engaged in sexual intercourse with her, helped move her body, and lit a pipe bomb placed in her mouth.

PROCEDURAL HISTORY

Payne was convicted of murder and criminal conspiracy, and the Supreme Court of South Carolina affirmed the convictions on direct appeal. His application for post-conviction relief was dismissed. After counsel petitioned for certiorari and requested to be relieved, the court denied that request, ordered rebriefing, and granted certiorari to review whether Payne's counsel was ineffective for failing to object to a codefendant's counsel's comment on Payne's decision not to testify.

DISPOSITION

affirmed

CASES CITED

- State v. Payne, Op. No. 98-MO-008 (S.C. Sup. Ct. filed Jan. 26, 1998)
- Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988)
- Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- Gallman v. State, 307 S.C. 273, 414 S.E.2d 780 (1992)
- State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987)
- State v. Green, 269 S.C. 623, 239 S.E.2d 646 (1977)
- Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)
- Jackson v. State, Op. No. 25678, 2003 WL 21692966 (S.C. Sup. Ct. filed July 21, 2003)
- Legare v. State, 333 S.C. 275, 509 S.E.2d 472 (1998)
- De Luna v. United States, 308 F.2d 140 (5th Cir. 1962)
- United States v. Jackson, 64 F.3d 1213 (8th Cir. 1995)
- United States v. Mena, 863 F.2d 1522 (11th Cir. 1989)
- United States v. Whitley, 734 F.2d 1129 (6th Cir. 1984)
- United States v. Patterson, 819 F.2d 1495 (9th Cir. 1987)
- United States v. McClure, 734 F.2d 484 (10th Cir. 1984)

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