

SUPREME COURT OF APPEALS OF WEST VIRGINIA

William G. v. David Ballard, Warden

William G. · No. 15-1189 · Decided February 21, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of William G.'s petition for post-conviction habeas corpus relief. The court held that the missing sentencing transcript did not warrant relief because the request was untimely and the petitioner failed to establish prejudice. The court also rejected his ineffective-assistance claims, concluding that counsel's performance did not satisfy the applicable Strickland/Miller standard.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	February 21, 2017
DOCKET	15-1189
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the denial of his state post-conviction habeas corpus petition, challenging the loss of his sentencing-hearing transcript and the alleged ineffective assistance of counsel at sentencing and in seeking reconsideration of sentence.
STANDARD OF REVIEW	In reviewing a circuit court's findings and conclusions in a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo. The habeas petitioner bears the burden of establishing entitlement to relief.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	William G. v. David Ballard, Warden, Mount Olive Correctional Center

TOPICS

state post-conviction relief

ineffective assistance

sentencing

habeas corpus

criminal procedure

PRACTICE AREAS

state post-conviction habeas corpus

criminal procedure

ineffective assistance of counsel

sentencing

QUESTIONS PRESENTED

1. Whether the loss of the sentencing-hearing transcript, despite petitioner's later requests for it, entitled him to state habeas corpus relief.
2. Whether trial counsel and counsel for the motion for reconsideration provided ineffective assistance by failing to obtain or present additional psychiatric and treatment-plan evidence and by failing to properly advocate for probation or another alternative sentence.

HOLDINGS

1. The loss of a sentencing-hearing transcript does not automatically entitle a criminal defendant to habeas relief; relief requires a timely request and affirmative proof of prejudice. Petitioner failed to make a timely request for the sentencing transcript and failed to establish prejudice from its loss.
2. Petitioner failed to establish ineffective assistance of counsel because he did not show a reasonable probability that counsel's alleged failures concerning psychiatric evidence, treatment planning, or sentencing advocacy changed the outcome of sentencing or reconsideration.

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.” (at 4)

“Further, we find that petitioner failed to timely request his sentencing transcript.” (at 5)

“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, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984): (1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” (at 7)

FACTUAL BACKGROUND

William G. was convicted in 2005 of sexually assaulting his five-year-old niece when he was fifteen years old and was sentenced to fifteen to thirty-five years in prison. The transcript of his June 2005 sentencing hearing could not be located after the responsible court reporter and reporting records became unavailable. Before sentencing, a psychological evaluation by Dr. Joseph R. Novello was prepared and filed with the circuit court; the report addressed petitioner's background, mental status, risk of reoffending, and potential conditions for release. At the habeas evidentiary hearing, petitioner claimed counsel should have obtained additional psychiatric and treatment-plan evidence and more forcefully sought probation or alternative sentencing.

PROCEDURAL HISTORY

Petitioner was convicted by a jury in 2005 of first-degree sexual assault and sentenced to fifteen to thirty-five years in prison, with sexual-offender registration and court costs. He did not directly appeal his conviction or sentence. After unsuccessful efforts to obtain the sentencing transcript, he filed a habeas petition in 2012 and an amended petition in 2013. The circuit court denied relief after show-cause and evidentiary hearings, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- State v. Georgius, 225 W. Va. 716, 696 S.E.2d 18 (2010)
- State ex rel. Johnson v. McKenzie, 159 W. Va. 795, 226 S.E.2d 721 (1976)
- State v. Shafer, 168 W. Va. 474, 284 S.E.2d 916 (1981)
- State v. Graham, 208 W. Va. 463, 541 S.E.2d 341 (2000)
- State v. Darrell L., No. 13-1208, 2014 WL 6634367 (W. Va. Nov. 24, 2014)
- Tennant v. Marion Health Care Foundation, Inc., 194 W. Va. 97, 459 S.E.2d 374 (1995)
- State ex rel. Smith v. Boles, 150 W. Va. 1, 146 S.E.2d 585 (1965)
- State v. J.S., 233 W. Va. 198, 757 S.E.2d 622 (2014)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- Ballard v. Ferguson, 232 W. Va. 196, 751 S.E.2d 716 (2013)
- State ex rel. Kitchen v. Painter, 226 W. Va. 278, 700 S.E.2d 489 (2010)
- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- State ex rel. Franklin v. McBride, 226 W. Va. 375, 701 S.E.2d 97 (2010)
- Markley v. Coleman, 215 W. Va. 729, 601 S.E.2d 49 (2004)
- State ex rel. Scott v. Boles, 150 W. Va. 453, 147 S.E.2d 486 (1966)