

SUPREME COURT OF NEW HAMPSHIRE

State v. Oscar Grande

168 N.H. 487 (2016) · No. 2013-0762 · Decided January 12, 2016

SUMMARY

The Supreme Court of New Hampshire held that Oscar Grande was collaterally estopped from relitigating ineffective-assistance-of-counsel claims in his direct appeal after litigating and losing those claims in a motion for a new trial and failing to timely appeal the trial court's ruling. The court affirmed his armed-robbery conviction.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Conboy, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	January 12, 2016
DOCKET	2013-0762
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a jury conviction for armed robbery, presenting an ineffective-assistance-of-counsel claim after the defendant had litigated the same claim in a post-trial motion for new trial and failed to timely appeal its denial.
STANDARD OF REVIEW	The court applied the collateral-estoppel framework to determine whether the defendant could relitigate his ineffective-assistance issues on direct appeal.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Oscar Grande v. State of New Hampshire

TOPICS

- ineffective assistance
- state post-conviction relief
- post-conviction relief
- appellate procedure
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the defendant was procedurally barred by collateral estoppel from raising on direct appeal ineffective-assistance issues that he had previously litigated in a motion for new trial and failed to timely appeal.
2. Whether *State v. Thompson* permitted the defendant to obtain appellate review of the ineffective-assistance claim through the direct appeal after litigating and losing the claim in the trial court.

HOLDINGS

1. The defendant was collaterally estopped from raising the ineffective-assistance issues again on direct appeal because the issues were identical, were resolved on the merits in the trial court, the defendant was a party with a full and fair opportunity to litigate, and the findings were essential to the final judgment.
2. *State v. Thompson* does not permit a defendant to litigate an ineffective-assistance claim in the trial court, fail to appeal the adverse ruling, and then obtain appellate review of the same claim as part of the direct appeal.

KEY QUOTATIONS

“However, “we again emphasize[d] that we strongly disfavor adjudication on direct appeal,” and that “we maintain a strong preference for collateral review of ineffectiveness claims.”” (168 N.H. at 487)

“Therefore, because all of the prongs of the test are satisfied, we hold that the defendant is collaterally estopped from raising his ineffective assistance of counsel issues again in this direct appeal.” (168 N.H. at 488)

FACTUAL BACKGROUND

Two masked men robbed the Bremmer Street Food Mart in Manchester, with one carrying a knife, but obtained no money. A resident, Lisa Velasques, told police that she overheard the defendant and another man discuss the Food Mart robbery and also discuss a separate robbery at the 99 Cent and Cedar Market. Before trial, the court initially denied the State's request to admit evidence of the uncharged 99 Cent Store robbery, but reversed that ruling after defense counsel's opening statements. The defendant claimed that counsel was ineffective for failing to contest the admission of that evidence and failing to argue that it was inadmissible hearsay.

PROCEDURAL HISTORY

Following a jury trial in the Superior Court, the defendant was convicted of armed robbery. He filed a motion for new trial alleging ineffective assistance of counsel, but the trial court denied the motion and a motion for reconsideration. He did not timely appeal that ruling, and the Supreme Court later denied his requests for permission to file a late appeal. The Supreme Court nevertheless permitted him to add the ineffective-assistance claim to his direct appeal, subject to the State's procedural objections, and affirmed on collateral-estoppel grounds.

DISPOSITION

affirmed

CASES CITED

- State v. Thompson, 161 N.H. 507, 527-528 (2011)
- Hansa Consult of N. Am. v. Hansaconsult Ingenieurgesellschaft, 163 N.H. 46, 50 (2011)
- State v. Hall, 154 N.H. 180, 182 (2006)
- Pennsylvania v. Finley, 481 U.S. 551, 557 (1987)
- Tyler v. Hannaford Bros., 161 N.H. 242, 247 (2010)

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