

SUPREME COURT OF UTAH

Benvenuto v. State

165 P.3d 1195 (Utah 2007) · No. No. 20060197 · Decided July 17, 2007

SUMMARY

The Supreme Court of Utah affirmed the denial of Jorge Martin Benvenuto’s petition for post-conviction relief. Benvenuto argued that Utah violated his rights under the Vienna Convention on Consular Relations by failing to notify him of his right to consular communication and that counsel was ineffective for failing to raise the issue. The court held that his claims were procedurally and time barred, and that he failed to establish ineffective assistance, prejudice, or an adequate basis for an interests-of-justice exception.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Durrant; Chief Justice Durham; Associate Chief Justice Wilkins; Justice Nehring; Justice Parrish
JURISDICTION	Utah
DECIDED	July 17, 2007
DOCKET	No. 20060197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's dismissal of a petition for post-conviction relief challenging a criminal conviction and sentence based on alleged violations of Vienna Convention consular-notification rights and ineffective assistance of counsel.
STANDARD OF REVIEW	The court reviewed the denial or dismissal of a post-conviction-relief petition for correctness without deference to the lower court's legal conclusions. Purely factual findings underlying an ineffective-assistance claim were reviewed for clear error, while application of law to facts was reviewed for correctness.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Utah.
PARTIES	Jorge Martin Benvenuto v. State of Utah

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

plea bargaining

foreign affairs

PRACTICE AREAS

Post-conviction relief

Criminal procedure

Ineffective assistance of counsel

International and treaty law

QUESTIONS PRESENTED

1. Whether Benvenuto's Vienna Convention consular-notification claims were procedurally barred because they could have been raised at trial or on direct appeal.
2. Whether ineffective assistance of trial, post-plea, or appellate counsel excused the procedural bar.
3. Whether Benvenuto's petition was untimely under the Utah Post-Conviction Remedies Act and qualified for the statute's interests-of-justice exception.
4. Whether the alleged failure to provide consular notification entitled Benvenuto to post-conviction relief or permitted withdrawal of his guilty pleas.

HOLDINGS

1. Benvenuto's Vienna Convention claims were procedurally barred because they could have been raised at trial or on appeal but were not.
2. Benvenuto failed to establish ineffective assistance of trial, post-plea, or appellate counsel.
3. Benvenuto failed to demonstrate that law enforcement violated his Vienna Convention right to consular notification because the authorities were not aware, and reasonably could not have been aware, that he was a foreign national.
4. Even assuming a Vienna Convention notification violation occurred, Benvenuto's knowing and voluntary guilty pleas waived the alleged nonjurisdictional treaty violation.
5. Benvenuto's petition was time barred, and he did not establish grounds for excusing the untimely filing in the interests of justice.

KEY QUOTATIONS

“We hold that his petition is barred by Utah Code section 78-35a-106(1)(c) because he could have alleged a violation of his Vienna Convention rights at trial or on appeal, but did not.” (¶ 36)

“In addition, we hold that Benvenuto's petition is barred by Utah Code section 78-35a-107(1) because it was brought after the one-year limitations period had expired.” (¶ 36)

FACTUAL BACKGROUND

Benvenuto, a Uruguayan citizen who believed he was a United States citizen, was arrested after shooting two people, killing one and severely wounding the other. He confessed and later pleaded guilty to aggravated murder and attempted aggravated murder in exchange for avoiding the death penalty. Neither Benvenuto nor his attorneys raised his foreign nationality or Vienna Convention rights before or during the plea proceedings or on

direct appeal. After learning of his Uruguayan citizenship and consular-notification rights in 2002, he filed a post-conviction petition in 2005.

PROCEDURAL HISTORY

Benvenuto pleaded guilty in 1997 to aggravated murder and attempted aggravated murder in exchange for dismissal of aggravated-robbery charges and the State's agreement not to seek the death penalty. The trial court denied his motion to withdraw the pleas, and the Utah Supreme Court affirmed that ruling in 1999. After learning in 2002 that he was a Uruguayan citizen and had consular-notification rights, Benvenuto filed a post-conviction petition in 2005. The district court dismissed the petition as procedurally barred and untimely, and the Utah Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Benvenuto, 1999 UT 60, 983 P.2d 556
- Taylor v. State, 2007 UT 12, 156 P.3d 739
- Strickland v. Washington, 466 U.S. 668 (1984)
- Bundy v. Deland, 763 P.2d 803 (Utah 1988)
- Parsons v. Barnes, 871 P.2d 516 (Utah 1994)
- Hill v. Lockhart, 474 U.S. 52 (1985)
- Smith v. Robbins, 528 U.S. 259 (2000)
- Bruner v. Carver, 920 P.2d 1153 (Utah 1996)
- Carter v. Galetka, 2001 UT 96, 44 P.3d 626
- Banks v. Reynolds, 54 F.3d 1508 (10th Cir. 1995)
- Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 33 (Mar. 31)
- Adams v. State, 2005 UT 62, 123 P.3d 400
- State v. Parsons, 781 P.2d 1275 (Utah 1989)
- Tollett v. Henderson, 411 U.S. 258 (1973)
- United States v. Reyes-Platero, 224 F.3d 1112 (9th Cir. 2000)
- United States v. Gonzales, 339 F.3d 725 (8th Cir. 2003)