

SUPREME COURT OF LOUISIANA

State v. McGee

264 So. 3d 445 (La. 2019) · Decided February 25, 2019

SUMMARY

The Louisiana Supreme Court considered claims that trial counsel provided ineffective assistance by failing to introduce the defendant's statements to police, subpoena a detective, and seek fingerprint testing of a machete. The court held that the record did not establish deficient performance or prejudice and did not warrant an evidentiary hearing at that stage. It reversed the court of appeal's remand order and remanded for consideration of the remaining assignments of error.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	February 25, 2019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Louisiana Supreme Court granted a writ application arising from an intermediate appellate court's remand for an evidentiary hearing on the defendant's ineffective-assistance claims.
STANDARD OF REVIEW	Under Strickland v. Washington, the defendant must show that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense so that the trial was unfair and the verdict suspect. The court also considered whether the appellate record was sufficiently developed to resolve ineffective-assistance claims without a post-conviction evidentiary hearing.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

ineffective assistance post-conviction relief hearsay suppression of evidence appellate procedure

PRACTICE AREAS

criminal procedure post-conviction relief evidence constitutional law

QUESTIONS PRESENTED

1. Whether counsel rendered ineffective assistance by failing to introduce or proffer defendant's pretrial statements to two police officers.
2. Whether counsel rendered ineffective assistance by failing to subpoena Detective Isom to testify.
3. Whether counsel rendered ineffective assistance by failing to request fingerprint testing of a machete found near the crime scene.
4. Whether the court of appeal properly remanded for a post-conviction-style evidentiary hearing on the ineffective-assistance claims.

HOLDINGS

1. Counsel did not render ineffective assistance by failing to introduce or proffer defendant's statements to Captain Hanna and Detective Isom because the statements were hearsay, no hearsay exception applied, and defendant could not introduce his pretrial statement before the jury without subjecting himself to cross-examination.
2. Counsel did not render ineffective assistance by failing to subpoena Detective Isom because his testimony would have been relevant only to lay a foundation for or describe defendant's inadmissible statement.
3. On the appellate record, defendant failed to demonstrate ineffective assistance or evidence sufficiently compelling to justify remanding for an evidentiary hearing concerning counsel's failure to request fingerprint testing of the machete.
4. Although ineffective-assistance claims generally should be raised in an application for post-conviction relief to permit a full evidentiary hearing, the reviewing court may resolve the claims on appeal when the record is adequate; here, defendant was not entitled to an evidentiary hearing at this stage.

KEY QUOTATIONS

"Thus, counsel did not render ineffective assistance in failing to introduce or proffer these statements." (447)

"Defendant may urge this claim in future post-conviction proceedings, subject to all the procedural requirements thereof." (447)

FACTUAL BACKGROUND

Defendant was convicted of second degree murder. He claimed that counsel should have introduced or proffered statements he made to Captain Hanna and Detective Isom, subpoenaed Detective Isom, and sought fingerprint testing of a machete found near the crime scene. Two eyewitnesses testified that the victim was unarmed when he left his vehicle and when he was shot.

PROCEDURAL HISTORY

Defendant was convicted of second degree murder and raised three ineffective-assistance claims on appeal: failure to introduce or proffer statements to police officers, failure to subpoena one officer, and failure to seek fingerprint testing of a machete. The court of appeal found the record insufficient to resolve the claims,

remanded for a full evidentiary hearing, and pretermitted the remaining assignments of error. The Louisiana Supreme Court reversed that remand, held the existing materials sufficient to reject the ineffective-assistance claims and deny a hearing at that stage, and remanded to the court of appeal to address the pretermitted assignments of error.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeal's remand to the district court for an evidentiary hearing was reversed. The matter was remanded to the court of appeal to consider the assignments of error that it had pretermitted.

CASES CITED

- State v. McGee, 51,977, p. 8 (La. App. 2 Cir. 5/23/18), 247 So. 3d 1142, 1146
- Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984)
- State v. Washington, 491 So. 2d 1337, 1338-39 (La. 1986)
- State v. Burkhalter, 428 So. 2d 449, 456 (La. 1983)
- State v. Seiss, 428 So. 2d 444, 449 (La. 1983)
- State v. Ratcliff, 416 So. 2d 528, 530-32 (La. 1982)
- State v. Guillory, 373 So. 2d 133, 135 (La. 1979)
- State v. Melerine, 236 La. 930, 971, 109 So. 2d 471, 486 (1959)
- State v. Mansfield, 50,426, p. 19 (La. App. 2 Cir. 2/24/16), 190 So. 3d 322, 333

OPINION

PER CURIAM.

PER CURIAM: Writ granted. Defendant, having been convicted of second degree murder, urged on appeal that defense counsel rendered ineffective assistance in three specific ways: 1) for failing to introduce or proffer statements he made to two separate police officers following his arrest; 2) for failing to subpoena one of these officers to testify at trial; and 3) for failing to request that a machete found near the scene of the crime be fingerprinted as possible exculpatory evidence.

See State v. McGee, 51,977, p. 8 (La. App. 2 Cir. 5/23/18), 247 So.3d 1142, 1146. The court of appeal concluded the record was insufficient to resolve these claims and remanded with instructions for the trial court to conduct a full evidentiary hearing, pretermitted discussion of defendant's remaining assignments of error.

Under the standard for ineffective assistance of counsel set out in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), adopted by this Court in State v. Washington, 491 So.2d 1337, 1338-39 (La. 1986), a reviewing court must reverse a conviction if

the defendant establishes (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect.

Generally, a claim for ineffective assistance of counsel is properly raised in an application for post-conviction relief. *State v. Burkhalter*, 428 So.2d 449, 456 (La. 1983). This enables the district judge to conduct a full evidentiary hearing on the matter. *State v. Seiss*, 428 So.2d 444, 449 (La. 1983).

However, the information contained in the writ application and the opinion below is adequate to support a finding that defendant failed to demonstrate ineffective assistance of counsel or entitlement to a hearing at this stage of the proceedings. See, e.g., *State v. Ratcliff*, 416 So.2d 528, 530-32 (La. 1982) ("Since the record discloses evidence needed to decide the issue of ineffective assistance of counsel and that issue was raised by assignment of error on appeal, in the interest of judicial economy we will address that issue now."). *447 Defendant's statements to Captain Hanna and Detective Isom are hearsay and apparently believed by defendant to present an exculpatory version of the events surrounding his conviction.

Hearsay is inadmissible unless it falls within an exception. La.C.E. art. 802. No hearsay exceptions apply in this case. Contra La.C.E. arts. 803 & 804. Further, a defendant may not introduce his pretrial statement before the jury without subjecting himself to cross-examination. See, e.g., *State v. Guillory*, 373 So.2d 133, 135 (La. 1979); see also *State v. Melerine*, 236 La. 930, 971, 109 So.2d 471, 486 (1959).

Thus, counsel did not render ineffective assistance in failing to introduce or proffer these statements. Because Detective Isom's testimony would only have been relevant to lay a foundation for, or describe, defendant's statement to him, counsel also did not render ineffective assistance for failing to subpoena him to testify at trial. Defendant argues in his third claim that counsel rendered ineffective assistance by failing to request that a machete found near the scene be fingerprinted as possible exculpatory evidence.

We note that the two eyewitnesses to the shooting who testified at trial each stated that the victim was unarmed both when he left his vehicle and when he was shot. See *McGee*, 51,977, pp. 6-7, 247 So.3d at 1145-46. On these facts, defendant has failed to show that there was evidence in the appellate record "sufficiently compelling to conclude that the interest of justice and judicial economy will be best served by remanding the matter for an evidentiary hearing at this juncture."

State v. Mansfield, 50,426, p. 19 (La. App. 2 Cir. 2/24/16), 190 So.3d 322, 333 (listing as relevant factors the length of the defendant's pretrial and post-trial incarceration, his conviction of a lesser included offense, and indications of other possible acts of ineffective assistance of counsel found

in the record). Defendant may urge this claim in future post-conviction proceedings, subject to all the procedural requirements thereof.

See La.C.Cr.P. art. 924 et seq. The court of appeal is reversed to the extent that it remanded with instructions to the district court, and this matter is remanded to the court of appeal for consideration of the pretermitted assignments of error. **REVERSED AND REMANDED**