

SUPREME COURT OF GEORGIA

Walker v. State

302 Ga. 356 (2017) · Decided October 16, 2017

SUMMARY

The Georgia Supreme Court affirmed the denial of Kelvin Dejuan Walker’s motion for an out-of-time appeal from convictions for felony murder and aggravated assault. The court held that the offenses did not merge because they involved different victims, the convictions and sentences were valid on the face of the record, and Walker had no constitutional right to appointed counsel for the motion.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Grant, Justice
JURISDICTION	Georgia
DECIDED	October 16, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Walker appealed the trial court's denial of his motion for an out-of-time appeal and his request for appointment of counsel.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Kelvin Dejuan Walker v. State

TOPICS

- appellate procedure
- post-conviction relief
- criminal procedure
- right to counsel
- sentencing

PRACTICE AREAS

- Georgia criminal appellate procedure
- post-conviction relief
- guilty pleas
- sentencing and merger of offenses

QUESTIONS PRESENTED

- Whether Walker was entitled to an out-of-time appeal based on his claim that the felony-murder and aggravated-assault convictions merged and were therefore void.
- Whether the trial court erred by denying Walker's request for appointment of counsel to pursue his motion for an out-of-time appeal.

HOLDINGS

1. A defendant seeking an out-of-time appeal from a judgment entered on a guilty plea must show that the proposed appellate claims can be resolved on the existing record and that the failure to pursue a timely appeal resulted from ineffective assistance of plea counsel. When the proposed claims fail on the face of the record, plea counsel could not have been ineffective for failing to pursue an appeal. Because murder and aggravated assault upon different victims do not merge as a matter of law, Walker's convictions and sentences were valid and he was not entitled to an out-of-time appeal.
2. A defendant has no constitutional right to the assistance of counsel in pursuing a motion for an out-of-time appeal; therefore, the trial court did not err by denying Walker's request for appointed counsel.

KEY QUOTATIONS

"In order to receive an out-of-time appeal from a judgment entered on a guilty plea, an appellant must show (1) that the claims he seeks to raise on appeal can be resolved on the existing record; and (2) that the failure to pursue a timely appeal was due to the ineffective assistance of his plea counsel." (302 Ga. at 357)

"But if the claims the appellant seeks to raise can be resolved against him on the face of the record, so that even a timely appeal would not have been successful, then plea counsel cannot be said to have rendered ineffective assistance in failing to advise the appellant or otherwise assist him in pursuing an appeal." (302 Ga. at 357)

"Murder and aggravated assault upon different victims do not merge as a matter of law." (302 Ga. at 357)

FACTUAL BACKGROUND

Walker pleaded guilty to felony murder and aggravated assault arising from a shooting in which his estranged wife was killed and another victim was injured. The plea-hearing facts showed that Walker shot his wife inside their home and then shot the second victim, who was in the driveway calling 911. The murder and aggravated-assault convictions involved different victims.

PROCEDURAL HISTORY

Walker entered a counseled guilty plea to felony murder and aggravated assault in January 2001 and received a life sentence for murder and a consecutive ten-year sentence for aggravated assault. His later motion to withdraw his plea and motion in arrest of judgment were denied. In 2016, he moved for an out-of-time appeal, asserting that his convictions and sentences were void because the offenses merged, and sought appointed counsel. The trial court denied both requests, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- *Waye v. State*, 301 Ga. 469, 469 (801 S.E.2d 818) (2017)
- *Biddy v. State*, 253 Ga. 289, 292 (2) (319 S.E.2d 842) (1984)

- Brooks v. State, 301 Ga. 748, 753 (3) (804 S.E.2d 1) (2017)

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