

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. William R. Adkins v. Dennis Dingus, Warden

Adkins · No. No. 11-1271 · Decided November 21, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of William R. Adkins’s habeas corpus petition following his first-degree murder conviction. The court rejected claims that trial counsel was ineffective for failing to request a castle-doctrine jury instruction and that appellate counsel was ineffective for failing to obtain the transcript of a suppression hearing. The court concluded that trial counsel’s reliance on self-defense was a reasonable strategy and that Adkins failed to establish prejudice from the missing transcript.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Davis
JURISDICTION	West Virginia
DECIDED	November 21, 2013
DOCKET	No. 11-1271
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a state habeas corpus petition alleging ineffective assistance of trial and appellate counsel.
STANDARD OF REVIEW	Ineffective assistance of counsel is a mixed question of law and fact: historical facts are reviewed for clear error, while legal conclusions and the ultimate ineffective-assistance claim are reviewed de novo. Counsel's performance receives highly deferential review, with a strong presumption of reasonableness.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	William R. Adkins v. Dennis Dingus, Warden, McDowell County Correctional Center

TOPICS

state post-conviction relief

habeas corpus

ineffective assistance

self defense

fourth amendment

PRACTICE AREAS

Criminal Law

Post-Conviction Relief

Criminal Procedure

Constitutional Law

Appellate Practice

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by relying on self-defense and failing to request a castle-doctrine jury instruction.
2. Whether appellate counsel rendered ineffective assistance by failing to obtain and include the suppression-hearing transcript on direct appeal.
3. Whether ammunition seized during a protective sweep was admissible under the plain-view exception despite the absence of exigent circumstances when the ammunition was later seized.

HOLDINGS

1. Trial counsel was not constitutionally ineffective for choosing to rely on self-defense rather than requesting a castle-doctrine instruction. The strategy was objectively reasonable under the circumstances, and the petitioner failed to establish deficient performance.
2. Appellate counsel was not ineffective for failing to request the suppression-hearing transcript because Adkins failed to show specific prejudice from its absence.
3. The ammunition was not seized in violation of the Fourth Amendment because it was in plain view during a lawful protective sweep, even though exigent circumstances had dissipated by the time the police formally seized it.

KEY QUOTATIONS

“We hold that the mere fact that trial counsel failed to offer a viable defense instruction is not alone a sufficient ground to prove ineffectiveness.” (9)

“The essential predicates of a plain view warrantless seizure are (1) that the officer did not violate the Fourth Amendment in arriving at the place from which the incriminating evidence could be viewed; (2) that the item was in plain view and its incriminating character was also immediately apparent; and (3) that not only was the officer lawfully located in a place from which the object could be plainly seen, but the officer also had a lawful right of access to the object itself.” (17)

FACTUAL BACKGROUND

Adkins shot and killed his ex-girlfriend's adult son in Adkins's home after the victim allegedly demanded money and threatened him with a gun. The victim was shot five times and suffered head injuries; forensic evidence also placed blood on Adkins's clothing and inside his gun. Adkins was convicted of first-degree murder after a three-day trial and received a recommendation of mercy. The habeas claims concerned counsel's failure to request a castle-doctrine instruction and appellate counsel's failure to obtain a transcript of a suppression hearing involving ammunition seized from the home.

PROCEDURAL HISTORY

Adkins was convicted by a jury of first-degree murder with a recommendation of mercy. This Court refused his direct appeal in 2001. After filing a pro se habeas petition and multiple amended filings, the Circuit Court of Logan County held an omnibus hearing and denied habeas relief by order entered August 9, 2011. Adkins appealed, raising two of the twenty-eight claims presented below.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Vernatter v. Warden, 207 W. Va. 11, 528 S.E.2d 207 (1999)
- State ex rel. Daniel v. Legursky, 195 W. Va. 314, 465 S.E.2d 416 (1995)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Preece, 166 W. Va. 176, 179 S.E. 524 (1935)
- State v. W.J.B., 166 W. Va. 602, 276 S.E.2d 550 (1981)
- State v. Baker, 177 W. Va. 769, 356 S.E.2d 862 (1987)
- Solomon v. Kemp, 735 F.2d 395, 404 (11th Cir. 1984), cert. denied, 469 U.S. 1181 (1985)
- Johnson v. McKenzie, 159 W. Va. 795, 226 S.E.2d 721 (1976)
- State v. Graham, 208 W. Va. 463, 541 S.E.2d 341 (2000)
- State v. Kendall, 219 W. Va. 686, 639 S.E.2d 778 (2006)
- State v. Flippo, 212 W. Va. 560, 575 S.E.2d 170 (2002)
- State v. Julius, 185 W. Va. 422, 408 S.E.2d 1 (1991)
- State v. Lacy, 196 W. Va. 104, 468 S.E.2d 719 (1996)
- Ullom v. Miller, 227 W. Va. 1, 705 S.E.2d 111 (2010)
- Flippo v. West Virginia, 528 U.S. 11 (1999)