

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Johnson

619 Pa. 387 (Pa. 2013) (Pa. 2013) · Decided March 25, 2013

SUMMARY

The Pennsylvania Supreme Court vacated the PCRA court's 2006 order dismissing the petition and its amendments, reinstated the matter, and remanded for review, possible evidentiary hearings, and reconstruction of the record. The court also directed consideration of counsel's authority to represent the appellant in the state PCRA proceeding and imposed reporting and assignment requirements.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Pennsylvania
DECIDED	March 25, 2013
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the PCRA court's dismissal of a capital defendant's petition for post-conviction relief.
STANDARD OF REVIEW	Effective appellate review requires a reasoned PCRA-court decision based on an adequate record; claims may not be treated as waived or previously litigated without considering the applicable pleadings, reconstructed-record discrepancies, and governing decisional law.
PRECEDENTIAL VALUE	Published Pennsylvania Supreme Court per curiam order
PARTIES	Johnson v. Commonwealth

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

appellate procedure

right to counsel

PRACTICE AREAS

state post-conviction relief

criminal procedure

appellate procedure

ineffective assistance

QUESTIONS PRESENTED

1. Whether the PCRA court's dismissal could stand when the reconstructed record may have omitted pleadings and supporting materials relevant to waiver and pleading-deficiency determinations.
2. Whether claims alleging trial counsel ineffectiveness are distinct Sixth Amendment claims that are not necessarily barred merely because the underlying trial-error claims were previously litigated on direct review.
3. Whether the PCRA court complied with the applicable notice-and-amendment procedures before dismissing claims for pleading deficiencies.
4. Whether current federal community defender counsel should continue representing Johnson in the state PCRA proceeding or whether other post-conviction counsel should be appointed.

HOLDINGS

1. The PCRA order could not be effectively reviewed because the reconstructed record may be incomplete and the PCRA court did not provide reasoned analysis sufficient to support its waiver, previous-litigation, and merits determinations; the order therefore had to be vacated and the matter remanded.
2. A claim that trial counsel was ineffective presents a distinct Sixth Amendment claim separate from the underlying claim of trial-court error, so prior litigation of the underlying direct-review claim does not necessarily preclude the derivative ineffectiveness claim.
3. Pleading deficiencies in a PCRA petition or its amendments should be addressed through the notice-and-amendment procedures required by the Pennsylvania Rules of Criminal Procedure before dismissal on that basis.

KEY QUOTATIONS

“the March 6, 2006 order of the PCRA court is VACATED.” (622)

“claims of trial counsel ineffectiveness raise distinct Sixth Amendment claims, separate and apart from the underlying claims of trial court error” (623)

“This Court is unable to conduct effective appellate review in light of the PCRA court’s determination that many of appellant’s claims were waived or previously litigated” (624)

FACTUAL BACKGROUND

Johnson pursued a capital PCRA petition challenging his conviction and sentence following a 1992 jury trial. The reconstructed record apparently omitted pleadings, affidavits, declarations, and supplements relevant to several claims. The PCRA court nevertheless found six claims waived for failure to plead them, three claims previously litigated, and certain subclaims unsupported, without adequately addressing intervening precedent or the rules governing notice of deficient pleadings and amendment.

PROCEDURAL HISTORY

The PCRA court dismissed Johnson's PCRA petition and amendments in a March 6, 2006 order, finding some claims waived, some previously litigated, and others deficient or meritless. Because the record had been reconstructed and appeared incomplete, and because the PCRA court had not adequately applied intervening

Pennsylvania precedent or the applicable notice-and-amendment procedures, the Supreme Court vacated the order, reinstated the petition and amendments, and remanded for limited review and disposition.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The PCRA court must reinstate the PCRA petition and amendments; review and dispose of only the issues raised in the petition as amended; hold an evidentiary hearing on any claim presenting a material factual issue not resolvable as a matter of law; determine discrepancies in the reconstructed record; determine whether current counsel may continue representing Johnson or whether other appropriate post-conviction counsel should be appointed; and comply with the stated assignment and status-report deadlines. Jurisdiction was relinquished.

CASES CITED

- Commonwealth v. Williams, 566 Pa. 553, 782 A.2d 517 (2001)
- Commonwealth v. Collins, 585 Pa. 45, 888 A.2d 564 (2005)

OPINION

PER CURIAM.

ORDER PER CURIAM. AND NOW, this 25th day of March, 2013, the March 6, 2006 order of the PCRA court is VACATED. For the reasons stated below, the PCRA petition and its amendments are reinstated, and the case is REMANDED to the PCRA court for review and disposition limited to the issues raised in the PCRA petition as amended, including holding an evidentiary hearing on any claim which the court believes raises a material issue of fact and is not resolvable as a matter of law, in accordance with applicable rules and decisional law.

Furthermore, it is not clear that the record, as reconstructed, is adequate for appellate review; the court is directed to determine any discrepancies in the reconstructed record. This Court is unable to conduct effective appellate review in light of the PCRA court's determination that many of appellant's claims were waived or previously litigated without any recognition for this Court's developing case law in the years between the filing of the PCRA petition in 1998 and the opinion in support of dismissal nine years later.

Many of the issues were dismissed for pleading deficiencies, which should have been resolved by the PCRA court within the notice of intent to dismiss process. See Pa.R.Crim.P. 905(B), 907(1), and 909(B)(2); Commonwealth v. Williams, 566 Pa. 553, 782 A.2d 517 (2001). This failure on the part of the PCRA court has left this Court without any reasoned expression on the merits of those claims to assist us in our appellate review.

Specifically, the PCRA court determined that six of appellant's claims were waived because they were not contained in the pleadings. But, appellant contends that pleadings and affidavits were omitted from the reconstructed record, and it appears, at least in some instances, that the PCRA court erred in finding the claims waived on this basis.

The PCRA court also determined that three claims were previously litigated even though appellant pled those claims in the guise of trial counsel ineffectiveness. The PCRA court failed to acknowledge this Court's decision in *Commonwealth v. Collins*, 585 Pa. 45, 888 A.2d 564 (2005), which made clear that claims of trial counsel ineffectiveness raise distinct Sixth Amendment claims, separate and apart from the underlying claims of trial court error; thus, prior litigation of a direct review claim does not necessarily preclude derivative claims of ineffectiveness.

The PCRA court also addressed four claims on the merits, but found that certain sub-claims raised therein were waived because they were unsupported by proper documentation, ie., affidavits and/or declarations. Again, appellant disputes this determination, offering that the affidavits/declarations were included as exhibits to supplements that are not part of the reconstructed record.

Furthermore, such pleading deficiencies (if there were any) were subject to the notice and amendment procedure contemplated in the Rules enumerated above and in *Williams*, supra. Additionally, on remand, the court is directed to determine whether current counsel from the Federal Community Defender's Office should continue to represent appellant in this state capital PCRA proceeding, or whether other appropriate post-conviction counsel should be appointed, as there is no federal court order authorizing current counsel's involvement in these state court collateral proceedings.

See 18 U.S.C. § 3599(a)(2) (authorizing appointment of counsel to indigent state defendants actively pursuing federal habeas corpus relief from death sentence). *624 We recognize that the judge who presided over the 1992 jury trial and the PCRA petition is no longer sitting on the Court of Common Pleas of Philadelphia County.

Accordingly, the President Judge of the Court of Common Pleas of Philadelphia County is directed to assign this case for disposition within thirty days of disposition. The assigned judge is directed to provide this Court with a status report within ninety days of assignment, and then every thirty days thereafter. Jurisdiction relinquished. Justice TODD, consistent with her dissent to the Court's prior Order in this matter dated January 4, 2012, dissents from that portion of this Order directing that the PCRA court decide whether current counsel is lawfully representing appellant or whether other counsel should be appointed.