

SUPREME COURT OF APPEALS OF WEST VIRGINIA

David John Francisco v. Donnie Ames, Superintendent, Mt. Olive Correctional Facility

No. 19-0340 (W. Va. July 30, 2020) · No. 19-0340 · Decided July 30, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of David John Francisco's petition for a writ of habeas corpus. The court rejected his claims of ineffective assistance of counsel concerning advice about his guilty plea, failure to seek an early election between murder theories, and failure to obtain or object to a sentencing-related psychological letter. The court concluded that counsel's performance was not deficient and that Francisco failed to show a reasonable probability of a different outcome.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	July 30, 2020
DOCKET	19-0340
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Mason County Circuit Court's denial of his petition for a writ of habeas corpus challenging his convictions and sentences on ineffective-assistance and related grounds.
STANDARD OF REVIEW	In a habeas corpus action, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo. Ineffective-assistance claims are governed by the two-pronged Strickland test.
PRECEDENTIAL VALUE	nonprecedential memorandum decision
PARTIES	David John Francisco v. Donnie Ames, Superintendent, Mt. Olive Correctional Facility

TOPICS

state post-conviction relief ineffective assistance plea bargaining habeas corpus appellate procedure

PRACTICE AREAS

criminal law post-conviction relief criminal procedure constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by advising Francisco to plead guilty based on an asserted expectation of merciful sentencing.
2. Whether trial counsel was ineffective for failing to seek an order requiring the State to elect between premeditated murder and felony murder before Francisco entered his plea.
3. Whether trial counsel was ineffective for failing to request or object to the trial court's consideration of a sealed letter from a Division of Corrections psychologist during sentencing.
4. Whether the alleged errors, individually or cumulatively, prejudiced Francisco under the applicable ineffective-assistance standard.

HOLDINGS

1. Counsel was not constitutionally ineffective in advising Francisco to plead guilty because the plea-hearing record showed that Francisco understood he could receive life imprisonment without parole and that sentencing remained within the trial court's discretion; he also failed to establish a reasonable probability of a different result.
2. Counsel's failure to move for an earlier election between premeditated murder and felony murder was not objectively unreasonable, and Francisco failed to show a reasonable probability of a different outcome.
3. Counsel's failure to inquire about or request the sealed letter from the Division of Corrections psychologist, or to object to its consideration, was not deficient performance under the circumstances existing when Francisco pleaded and was sentenced.
4. Francisco was not entitled to habeas relief because he demonstrated neither deficient performance nor prejudice on any asserted ground, and the alleged errors did not establish cumulative error.

KEY QUOTATIONS

"In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review." (at 1)

"In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984):" (at 2)

"The State need not elect whether it will proceed on premeditated murder or felony murder until the close of all evidence; however, a defendant may make a motion to force an earlier election if he can make a strong, particularized showing that he will be prejudiced by further delay in electing." (at 3)

FACTUAL BACKGROUND

Francisco was indicted at age eighteen for murdering Norman Ray Laudermilt, Jr., and committing aggravated robbery after shooting Laudermilt six times. He was arrested in Florida while possessing Laudermilt's truck, and police found a diary entry expressing a desire to kill another person; Francisco also confessed. He pleaded guilty in 1994 in exchange for the State's silence on several issues, but the court imposed life imprisonment without mercy for murder and forty years for aggravated robbery. His habeas claims focused on counsel's advice regarding the plea, failure to seek an early election between murder theories, and failure to obtain or object to a sealed sentencing letter from a corrections psychologist.

PROCEDURAL HISTORY

Francisco pleaded guilty in 1994 to first-degree murder and aggravated robbery and received sentences of life without mercy and forty years, respectively. This Court affirmed his sentence on direct appeal in *State v. Francisco*, 199 W. Va. 223, 483 S.E.2d 806 (1996). Francisco filed a habeas petition in 1998; after an omnibus hearing, the Mason County Circuit Court denied relief on March 19, 2019. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- *State v. Francisco*, 199 W. Va. 223, 483 S.E.2d 806 (1996)
- *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- *State v. Walker*, 188 W. Va. 661, 425 S.E.2d 616 (1992)
- *Stuckey v. Trent*, 202 W. Va. 498, 505 S.E.2d 417 (1998)