

Court of Criminal Appeals
November 4, 2015

Ex Parte Sanchez

No.WR-83,806-01

Case Summary written by Eric Matthews, Staff Member.

PER CURIAM.

In the original trial, the trial court sentenced Sanchez to ten years in prison after he pleaded “no contest” to aggravated assault. Sanchez then applied for a writ of habeas corpus, claiming that he had deficient counsel at trial because his attorney incorrectly advised him that he could receive community supervision. Sanchez was not eligible for community supervision due to his deadly weapon allegation. He further claimed that he would not have plead “no contest” if he had known of his ineligibility.

The Court of Criminal Appeals determined that Sanchez’s counsel at trial was deficient because Sanchez was never correctly advised about his ineligibility for community supervision. This deficient performance prejudiced Sanchez, as his plea was not knowingly and voluntarily made. The court granted relief and remanded the case to trial.

JUDGE YEARY, concurring.

Judge Yeary agreed that relief should be granted but not because Sanchez’s counsel provided incorrect advice. Yeary argued that the counsel’s advice was not sufficiently detailed due to the court’s recent decision in *Guthrie-Nail v. State*, which he claimed gave the trial judge absolute discretion to decline a finding of the use of a deadly weapon. Yeary believed his dissent in that case would simplify this issue as well.

McKay v. State

No. PD-1133-14

Case Summary written by Andy Linn, Staff Member.

JUDGE MEYERS delivered the opinion of the court in which JUDGES JOHNSON, ALCALA, YEARY and NEWELL joined.

Appellant, Cody Wayne McKay, lived with his girlfriend, Brandee Casteel, and her daughters. While he was making dinner one night, Casteel's daughter, T.J., was playing in the house. Not knowing she had come into the kitchen, McKay turned around with a pot of hot green beans and bumped into T.J., causing him to spill hot water and green beans down her back. When the burn began to blister and pop two days later, Casteel took T.J. to the hospital and told the nurses and a police officer that she spilled the water on T.J., but later explained that McKay actually spilled the water.

McKay, charged with "injury to a child causing bodily injury, [with] and intentional mental state," was eventually "convicted of injury to a child with the [lesser-included] culpable mental state of criminal negligence," and sentenced to two years' imprisonment. The State's theory of the case was that McKay intentionally injured T.J., and presented almost no evidence of his criminal negligence. In attempting to prove McKay intentionally caused the injury, the State alleged a pattern of abuse and presented evidence of existing bruises on T.J., extensive "reports from the Texas Department of Family and Protective Services (DFPS)," and emphasized the time lapse between taking T.J. to the hospital and the accident. The court admitted the DFPS reports into evidence, but they were not read to the jury. On appeal, McKay argued insufficient evidence to support conviction. The court of appeals affirmed the conviction, pointing to Casteel's comments in the DFPS reports that she spilled the water on T.J. and "that T.J. was always 'up her butt.'" The court of appeals held the evidence legally sufficient, reasoning that the jury could have interpreted those comments to mean "T.J. was also always under Appellant's feet and, therefore, he should have known she would be close by while he was cooking."

Issue: Whether there was sufficient evidence to support Appellant's conviction of criminal negligence.

The Court of Criminal Appeals granted Appellant's motion for discretionary review to determine whether the State presented sufficient evidence at trial to support the conviction. In reviewing the sufficiency of the evidence, the Court "look[ed] at the evidence presented in the light most favorable to the verdict [to] determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" In order to prove criminal negligence, the Texas Penal Code requires the State to "show that the defendant should have been aware of a substantial and unjustifiable risk that the injury to the child would occur and that the failure to perceive this risk was a 'gross deviation from the standard of care that an ordinary person would exercise.'" The reviewing court looks at the circumstances from the defendant's point of view to determine whether it was a gross deviation. To support a criminal conviction here, the State must have proved that McKay created a substantial unjustifiable risk to the child by cooking and moving hot items in the kitchen, and failing to perceive this risk was a gross deviation "from the standard of care an ordinary person would exercise."

The court of appeals found that Casteel's statement in the DFPS report was the only piece of evidence that could support the jury's criminal negligence conviction. In reversing, the Court of Criminal Appeals held this piece of evidence legally insufficient to support a conviction. In fact, the court ruled that the statement was not even relevant, as children do not necessarily behave the same way with others as they do with their parents. McKay lived with the family for a very short period of time (less than three months), and he was not one of T.J.'s parents. The statement only indicated that T.J. was often underfoot of Casteel, not Appellant or anyone else. Moreover, the State did not present any evidence that Casteel told Appellant to take extra care because T.J. was often underfoot. Therefore, the court agreed with Justice Moseley's dissenting opinion "that 'it takes too great a leap of logic' too assume that," T.J. would often be under Appellant's feet because Casteel said T.J. was often under her feet.

Furthermore, because Casteel made the statement to DFPS while claiming it was she who tripped and spilled the water on T.J. makes its probative value questionable. Also, the court of appeal's statement that the jury could assume T.J. was often underfoot of McKay was not a reasonable inference. Without evidence that T.J. acted the same around Appellant or others as she did around her mother, and with the statement's questionable probative value, the court held that the statement was legally insufficient for a reasonable jury to have convicted Appellant of criminal negligence beyond a reasonable doubt.

Because the State did not show T.J. was often under Appellant's feet or that he knew she would likely be underfoot, the court held the evidence insufficient to support Appellant's conviction and reversed and vacated the conviction.

JUDGE HERVEY, dissenting, joined by PRESIDING JUDGE KELLER, JUDGE KEASLER, and JUDGE RICHARDSON.

Judge Hervey believed that the evidence presented and reviewed in the light most favorable to the verdict was sufficient to support Appellant's criminal negligence conviction. In addition to facts in the majority opinion, Judge Hervey pointed to the facts that "Appellant normally cooked meals for the children," Casteel had personally seen T.J. running around in the kitchen while Appellant cooked for the family, and that there was not much room for Appellant to move around in the kitchen. From all the evidence, the dissent opined "that the jury could have reasonably inferred that Appellant ought to have been aware that his cooking created a substantial and unjustifiable risk to T.J. because T.J. had been known to run around in the kitchen while he was cooking." And when the jury viewed the circumstances from the Appellant's perspective, it could have found his failure to perceive the risk to T.J. "was a gross deviation from the standard of care an ordinary person would have exercised."

Ex parte Barnaby

WR-80,099-01

Case Summary written by Pedro Leyva, Staff Member.

PER CURIAM.

Applicant, Kemos Marque Barnaby, applied for a writ of habeas corpus after discovering that the forensic technician who analyzed the applicant's seized substance in one the cases the State had against him, was known to have falsified test results. The applicant had previously taken a guilty plea in a package deal to four separate offenses of possession of a controlled substance with intent to deliver and was sentenced to four concurrent fifty-year sentences.

The applicant argued that because of the forensic technician's misconduct and false report, his guilty plea was involuntary. In order to prove a false-evidence habeas corpus claim, the applicant had to show that the evidence used in the case was false and that it was material. The court previously held that in technician-misconduct cases:

an applicant can establish that a laboratory technician's sole possession of a substance and testing results derived from that possession are unreliable, and we will infer that the evidence in question is false, if the applicant shows that: (1) the technician in question is a state actor, (2) the technician has committed multiple instances of intentional misconduct in another case or cases, (3) the technician is the same technician that worked on the applicant's case, (4) the misconduct is the type of misconduct that would have affected the evidence in the applicant's case, and (5) the technician handled and processed the evidence in the applicant's case within roughly the same period of time as the other misconduct.

If the applicant meets the falsity of the evidence requirement, he must still prove that the false evidence was material to his decision to plead guilty.

Since most false evidence cases involve the use of false testimony at trial, the court analyzed the falsity of the evidence in

a manner similar to that used when determining the materiality of ineffective assistance of counsel to a decision to plead guilty. The voluntariness of a plea when a defendant alleges ineffective assistance of counsel turns on: “(1) whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases and if not, (2) whether there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.”

Applying the technician-misconduct test outlined above, the court found that the applicant was able to establish an inference of falsity and that the state had failed to overcome that inference. The court next examined the materiality the false evidence had in the applicant’s decision to take the guilty plea. The materiality of false evidence is measured by the impact, if any, it had on the defendant’s decision to plead guilty. In determining the voluntariness of the plea, the court noted that the question is whether there is a reasonable likelihood that the false evidence affected the applicant’s decision to plead guilty, not whether it affected the conviction or sentence. If the applicant would have chosen to go to trial had he known the falsity of the evidence, then the false evidence was material.

In the case at issue, the applicant was indicted for possession of cocaine with intent to deliver in the amount of one gram or more but less than four grams. The applicant was treated as a habitual offender because he had at least two prior felony convictions. In this same case, the applicant was charged with three additional charges of possession with intent to deliver cocaine in a drug-free zone. As part of his plea deal, the state waived the drug free-zone finding on his other three judgments. The court found that even if the state had decided to dismiss the case for the falsity of the evidence, the state still had the other three cases against the applicant. Further, the waiver of the state’s drug-free-zone finding markedly affected applicant’s parole eligibility. Therefore, the applicant’s assertion that he would not have plead guilty had he known the falsity of the report was unpersuasive as to materiality.

The court held that, by a preponderance of the evidence, the value of the plea bargain outweighed the value of knowing that the laboratory report in this case was false. Relief was denied.

Ex Parte Reyes

No. PD-1277-14

Case Summary written by Luke Luttrell, Staff Member.

PRESIDING JUDGE KELLER delivered the opinion of the unanimous court.

Appellee was charged with domestic-violence assault and pursuant to an agreement, he pled guilty and was placed on community supervision. In his habeas application, appellee attacked the community-supervision judgment on five grounds: (1) his trial attorney failed to inform him that the judgment would result in deportation, (2) his trial attorney was ineffective for inadequately investigating the case, (3) the attorney failed to advise him on the law of self-defense, (4) his guilty plea was not knowingly and intentionally made, and (5) that he was actually innocent of the offense.

The trial court granted relief on the first ground and did not address the remaining four. The court of appeals reversed the trial court, holding that the trial court erred in granting relief on the first ground and the guilty plea was reinstated.

The Court of Criminal Appeals, in deciding whether it should address the remaining four issues, found that it is not required to resolve issues that become moot as a result of the resolution of other issues. So, when a habeas applicant advances multiple issues, the trial court may limit the relief to only one issue, if that resolution does not neglect an issue that would provide greater relief. As a result, the court does not spend time and resources resolving more difficult claims that afford no greater relief.

The Court of Criminal Appeals held that a declaration of actual innocence affords greater relief than granting a new trial because of its impact on the defendant's reputation. Therefore, the case was remanded for the trial court to consider the appellee's other claims that the trial court did not resolve.

Whether those proceedings involved additional fact-findings or further development of the record was a determination for the trial court. The judgment was reversed and remanded.

In re Medina

No. WR-75,835-02

Case Summary written by Katherine Koll, Staff Member.

JUDGE NEWELL delivered the opinion of the court.

Defendant Medina was tried for murder. During the sentencing phase of his trial, the prosecutor's motion for continuance was granted to accommodate juror absences. Medina's trial counsel filed a motion for mistrial on the basis that the continuance caused several out-of-country witnesses to be rendered unavailable. The motion was denied and Medina's trial counsel subsequently moved to withdraw from the case, due to the belief that she could not provide effective assistance of counsel, which was denied. Medina's counsel did not present any evidence during the sentencing phase and was held in contempt of court for failure to participate in the trial. Medina was subsequently convicted and sentenced to death. Medina appealed his sentence, claiming ineffective assistance of counsel. The Court of Criminal Appeals confirmed his conviction.

After Medina's first habeas petition failed due to insufficient pleadings, the Court of Criminal Appeals appointed counsel from the Office of Capital Writs, who then pursued the ineffective assistance of counsel claim. The habeas judge called for an evidentiary hearing in which the State called Medina as a witness. Medina filed a writ of prohibition and claimed a Fifth Amendment right against being called as a witness.

The issue before the court was whether it was a ministerial or judicial decision to allow Medina to testify in a post-conviction evidentiary hearing.

Whether Medina was entitled to Fifth Amendment protections as a matter of law in the habeas proceeding was an issue of first impression for the court. The court ultimately determined that the Fifth Amendment did not apply in the instant case because after a criminal conviction, the focus of the Fifth

Amendment protection shifts to protecting the defendant against future criminal liability. Although the court stipulated there may be situations that warrant Fifth Amendment protections in post-conviction proceedings.

Secondly, the court analyzed the requisite elements for a writ of prohibition. First, a defendant must show that the decision before the court is a ministerial decision, one not requiring judicial discretion. Secondly, a defendant must show there is no other remedy at law. The court denied the writ of prohibition and asserted that a writ of prohibition was not required in Medina's case, in which he was asked to testify in a post-conviction hearing before a habeas judge. The habeas judge has discretion to resolve fact issues, and because the Fifth Amendment did not apply to Medina, it was within the realm of judicial discretion to decide that Medina could testify in the habeas proceeding. Therefore, the court concluded that Medina did not meet the burden of proof required for granting the writ of prohibition claim.

JUDGE JOHNSON filed a concurring opinion.

Judge Johnson's concurring opinion was filed to clearly delineate the difference between the Fifth Amendment as a right and not a privilege. The Fifth Amendment is a right under the United States and Texas constitution and should be referred to as such.

JUDGE ALCALA dissented.

Judge Alcala believed the court should have granted the writ of prohibition to forbid the habeas judge from compelling Medina's testimony, due to Fifth Amendment protections. Judge Alcala relied on legislative intent to conclude there is a necessary distinction between habeas proceedings in death penalty versus non-death penalty cases. If a proceeding is in a death penalty case, a defendant's habeas proceedings should be considered part of the defendant's case, warranting additional protections. Further, even if the habeas proceeding were considered civil, the Fifth Amendment still applied in the instant case because an inquiry into the defense strategy could lead to statements that ". . . may

be incuplatory,” in which even an offer of immunity is not sufficient to protect.