VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 140-2-11 Cncv

Williams vs. State of Vermont

**DECISION ON MOTIONS FOR SUMMARY JUDGMENT**

This case, one of the oldest on the court's docket, began in February 2011 with the filing of a petition for post-conviction relief, which has since been amended twice. In 2008, after a week-long trial, a jury found Petitioner Christopher Williams guilty of two counts of first-degree murder, one count of attempted first-degree murder, and one count of attempted second-degree murder; the court sentenced him to life without parole. He now seeks to vacate those convictions. He alleges multiple violations, but seeks summary judgment as to only one: ineffective assistance of counsel in the change of plea hearing in which he rejected a plea agreement that called for a to-serve sentence of 48 years to life. The State cross-moves, seeking summary judgment on all claims. For the reasons that follow, the court grants the State's motion and denies Mr. Williams's.

The decision on these motions is driven largely by Mr. Williams's failure to meet his burden under V.R.C.P. 56. Thus, while the standards are so familiar as to be almost trite, they bear repeating here. Under Rule 56, the initial burden falls on the moving party to show an absence of dispute of material fact. *E.g.*, *Couture v. Trainer*, 2017 VT 73, ¶ 9 (citing V.R.C.P. 56(a)). When the moving party has made that showing, the burden shifts to the non-moving party; that party may not rest on mere allegations, but must come forward with evidence that raises a dispute as to the facts in issue. *E.g.*, *Clayton v. Unsworth*, 2010 VT 84, ¶ 16, 188 Vt. 432 (citing *Alpstetten Ass'n, Inc. v. Kelly*, 137 Vt. 508, 514 (1979)). Where that party bears the burden of proof on an issue, if fairly challenged by the motion papers, it must come forward with evidence sufficient to meet its burden of proof on that issue. *E.g.*, *Burgess v. Lamoille Housing P'Ship*, 2016 VT 31, ¶ 17, 201 Vt. 450 (citing *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989)). The evidence, on either side, must be admissible. *See* V.R.C.P. 56(c)(2), (4); *Gross v. Turner*, 2018 VT 80, ¶ 8 ("Once a claim is challenged by a properly supported motion for summary judgment, the nonmoving party . . . must come forward with admissible evidence to raise a dispute regarding the facts."). The court must view all evidence in the

light most favorable to the non-moving party and give that party the benefit of all reasonable doubts and inferences. *Carr v. Peerless Ins. Co.*, 168 Vt. 465, 476 (1998).

The court begins with analysis of the sole claim on which Mr. Williams seeks summary judgment—the claim advanced in his most recent amended petition regarding the performance of counsel at the change of plea hearing. He alleges that he was not competent at the time of the hearing, and that his counsel provided ineffective assistance in failing to ensure that he understood the plea deal and when it became apparent that he did not, in failing to have him evaluated for competence. He supports his motion with a statement of undisputed material facts, which in turn he supports with his affidavit. Mr. Williams, however, is plainly not a competent witness as to any of the facts he asserts; almost all are well beyond his demonstrated personal knowledge or expertise. Significantly, he offers no affidavits or other materials suggesting that any others have admissible evidence to offer on the facts he asserts; particularly glaring in this regard is his failure to disclose any expert opinion that his counsel's performance was deficient. Faced with the State's cross-motion, calling into question his ability to prove all of his claims, he completely whiffed; after three extensions, he failed to respond to the State's opposition, cross-motion, and statement of undisputed material facts (which relies entirely on the record below). Thus, he is left for proof to matters of record in the case below.

Viewed through this lens, the following facts emerge as undisputed. As noted above, Mr. Williams was charged with multiple capital offenses. He was arraigned on August 25, 2006; the arraigning judge ordered a psychiatric examination for competency and sanity. The examining psychiatrist concluded that Mr. Williams was competent to stand trial and not insane at the time of the offenses. Based on this report, Mr. Williams's attorney told the court that he did not oppose entry of an order finding Mr. Williams competent.

A year later, one of Mr. Williams's attorneys made a request for an updated competency evaluation, to address issues related to his cognitive functioning. The court ordered a supplemental examination; the examining psychiatrist again concluded that Mr. Williams was competent. Mr. Williams's attorneys declined to challenge this report. At the same hearing, they advised the court that they had reached a plea agreement with the State. The court scheduled a change of plea hearing for the next week.

At the change of plea hearing, the court went to great lengths to comply with not only the letter but the spirit of V.R.Cr.P. 11. The transcript of that hearing makes clear that the court was patient and empathetic, going to great lengths to make sure that Mr. Williams understood his rights in the hearing

and in the case, writ large; that he understood both the charges to which he was pleading and those that the State was dismissing; and that he understood the plea agreement itself.

This is where things broke down. The court repeatedly explained to Mr. Williams both the total sentence and the structure—24 years to life on each of the three remaining counts, with two consecutive and the third concurrent, for a total of 48 years to life—and Mr. Williams repeatedly expressing consternation as to the latter. The court then moved on to a scrupulous inquiry into the petition to enter a guilty plea. When it got to paragraph 12 of that document—Mr. Williams's acknowledgement that his attorneys had informed him that if he wished to plead not guilty he had a right to trial by a jury of 12, with unanimous verdict required—things broke down again. After patiently attempting to assure itself that Mr. Williams in fact understood his rights in this regard, and with the lunch hour imminent, the court asked, "All right, so when we were talking about your right to a jury trial, you understand that you have the right to have a trial in front of a jury on these charges if you wish it?" Mr. Williams answered, "I don't know." The court then determined to recess for lunch.

When the hearing resumed, the court asked, "Mr. Williams, have you had a chance to talk with your counsel over the lunch hour?" When Mr. Williams responded that he had, the court asked if he wanted to proceed with the change of plea. Mr. Williams responded: "I want to apologize, Your Honor. I'm really sorry about what happened this morning and stuff; I'm not understanding stuff, so I'm not taking this plea, so I'm all set, man, you know what I'm saying? So, whatever, you know?" When the court said, "I didn't quite hear you," Mr. Williams responded: "I'm not taking this plea, man. I'm not understanding what's going on, man. I'm not taking it, man, so, I'm all set." The State then amended the information to amend one of the murder counts to aggravated murder, the court arraigned Mr. Williams on the amended information, and the hearing concluded.

At a status conference two weeks later, Mr. Williams's counsel stated, "Judge, it wouldn't surprise anyone for me to say that I think the issue of competency has to be revisited in light of the last time we were before the Court." The court allowed the defense a month to complete any further review of competency issues. At a status conference held after that month had passed, counsel indicated the defense had no expert testimony on competency, but reserved the right to challenge competency at a later date. Three months later, with trial soon approaching, defense counsel filed a motion for an updated competency evaluation. The evaluating psychiatrist again concluded that Mr. Williams was competent to stand trial. The defense also had Mr. Williams evaluated by a psychiatrist, who determined that he could not express an opinion on competency because of concerns that Mr. Williams

was malingering. After a competency hearing at which both psychiatrists testified, the court concluded that Mr. Williams was competent.

Trial began just over a week later, on July 9, 2008. After seven days of evidence, the jury convicted Mr. Williams of two counts of first-degree murder, one count of attempted first-degree murder, and one count of attempted second-degree murder. The court subsequently sentenced Mr. Williams to three consecutive terms of life without parole on the three first-degree charges and a concurrent term of 20 to 25 years on the attempted second-degree charge.

Lest it be accused of mischaracterizing Mr. Williams's claims with regard to performance of his attorneys in connection with the plea-change hearing, the court quotes his motion:

> Here, the record establishes that either Petitioner lacked "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," or those attorneys were ineffective for failing to adequately advise Petitioner of the law in relation to the facts in order for Petitioner could make an informed decision as to whether it was advisable to reject the plea. Petitioner submits that but for the numerous, and extremely prejudicial failures of his attorneys, by either failing to ensure that Petitioner understood the terms of the plea, or apprising the court that Petitioner was unable to effectively assist consult with them with a reasonable degree of rational understanding, Petitioner would have accepted the State's plea offer and received a far less severe conviction and a far less onerous sentence.

Petitioner's Mot. for Summ. J. at 13-14. The problem with this argument is that the record, alone, establishes neither.

The standard for proof of an ineffective assistance of counsel claim is well established. First, a petitioner must "show by a preponderance of the evidence that defense counsel's performance fell below an objective standard of reasonableness informed by prevailing professional norms." *In re Combs*, 2011 VT 75, ¶ 9, 190 Vt. 559. "If this first burden is met, petitioner must further show that counsel's performance prejudiced the defense by demonstrating a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* Here, Mr. Williams can prove neither.

"Because '[t]rial counsel are permitted a great deal of discretion in decisions regarding trial strategy,' . . . 'expert testimony is generally required to show that an attorney's conduct fell below the standard of accepted practice in Vermont.' " *In re Fitzgerald*, 2020 VT 14, ¶ 31, 212 Vt. 135 (citations omitted). "Only in rare situations will ineffective assistance of counsel be presumed without expert testimony." *In re Grega*, 2003 VT 77, ¶ 16, 175 Vt. 631. This case does not present one of those rare situations. The court, reviewing the record, is at a complete loss to determine what counsel could have differently. Mr. Williams had been found competent only a week before the change of plea hearing. In

the hearing itself, the record reflects that counsel went to great lengths to make sure that Mr. Williams understood and accepted the plea deal. And when, notwithstanding their efforts, he rejected the agreement, what was counsel to have done then? Perhaps an expert could have found some shortcoming in counsel's performance, but it certainly is not obvious to the court.

Equally, there is no proof that but for counsel's defective performance—whatever that might have been—the outcome would have been different. This is not a case in which ineffective advice led to a defendant's rejection of a plea offer before it could be presented to the court, as in *Lafler v. Cooper*, 566 U.S. 156 (2012); rather, Mr. Williams claims that had counsel been more effective, he would not have backed out of a deal that had already been presented to the court. While in hindsight this may seem intuitive—after all, why would anyone who had had the obvious risks of going to trial in this case explained to him walk away from an obviously good deal to which he had already agreed—that presumes a degree of rationality that the court is unwilling to assume. Rather, the lengthy history of the case, detailed amply in the State's Statement of Material Undisputed Facts, provides more than ample basis for doubting that the outcome of the change of plea hearing would have been any different, no matter what counsel did either before or during the hearing.

These conclusions compel the denial of Mr. Williams's motion and the granting of the State's cross-motion on the claim asserted in the Amended Petition filed August 19, 2019. Mr. Williams did not seek summary judgment on his other claims, but the State did. As noted above, the State fairly called into question Mr. Williams's ability to prove these claims, and Mr. Williams failed to respond. Thus, any of his claims that require that he prove any facts to succeed must fail. *See Gross v. Turner*, 2018 VT 80, ¶ 8 ("Once a claim is challenged by a properly supported motion for summary judgment, the nonmoving party may not rest upon the allegations in the pleadings, but must come forward with admissible evidence to raise a dispute regarding the facts.").

This failure compels the dismissal of the first, second, and fourth claims of Mr. Williams's original Petition. Equally, it compels dismissal of the first three claims of his first Amended Petition (filed December 5, 2016). Each of these claims alleges ineffective assistance of counsel and so each requires proof of the *Strickland* elements. Petitioner has no expert affidavit; nor has he brought to the court's attention any other admissible evidence to carry his burden on these claims.[1]

None of Mr. Williams's remaining claims warrants extensive discussion. First, the third claim of his original Petition alleges that "[t]he Trial Court committed plain error in determining of its own

[1] The court notes also that the second claim—that trial "counsel failed to file an interlocutory appeal regarding suppression of custodial statements"—is defeated by the Supreme Court's decision on direct appeal that any error in suppressing some of those statements was harmless and by the fact that there is no proof that the trial court would have exercised its discretion to allow an interlocutory appeal—much less that such an appeal would have succeeded.

accord, aggravating and mitigating factors at sentencing, rather than to have these factors determined by the jury as settled by *Apprendi v. New Jersey*[, 530 U.S. 466 (2000)]." The problem with this claim is that *Apprendi* applies, by its own clear terms, only to cases in which a sentencing court "increases the penalty for a crime beyond the prescribed statutory maximum," *id.* at 491—in other words, enhanced penalty cases. Here, the statutory maximum for each of the crimes of which Mr. Williams was convicted is life without parole; there can have been no enhancement.

Similarly, the fourth claim of his first Amended Petition alleges that he "was also denied his fundamental right to a jury determination on every fact material to his punishment." Without more, it is hard to discern how this claim differs from the *Apprendi* claim. To the extent that it does, without any effort on Mr. Williams's part to make a factual showing, the court cannot know what "fact[s] material to punishment" were not determined by a jury. As far as appears on the record now before this court, a jury found Mr. Williams guilty of two counts of first degree murder and one count of attempted first degree murder. The finding on any one of these counts would have been sufficient to support the sentence ultimately imposed. With three such findings, one wonders, what else did the trial court need to impose its sentence? In short, there is clearly no showing of error here.

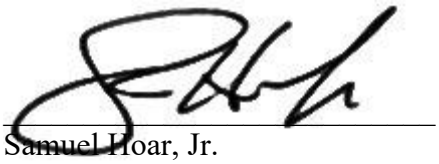
The fifth claim of the original Petition is that "[t]he Trial Court abused its discretion when it failed to suppress certain incriminating statements used by the prosecution which were obtained against judicial interest while in an uncounseled custodial interrogation." Here, it bears noting that the Supreme Court held, on direct appeal, that any error in failing to suppress some of these statements was harmless. There is no indication that the Court would have reached a different conclusion with respect to other statements allowed by the trial court had allowed. More fundamentally, there is no way for this court to evaluate the decision of the trial court without a proper record— which Mr. Williams failed to provide. Conversely, the facts shown by the State in its Statement of Material Undisputed Facts suggest no basis for second-guessing the trial court's determination that those statements were admissible pursuant to the public safety exception to *Miranda*.

**ORDER**

On his motion for summary judgment, Mr. Williams has failed to carry his initial burden of demonstrating an absence of dispute of material fact, much less that on the undisputed facts he is entitled to judgment as a matter of law. Rather, the State in its Opposition and Motion has fairly challenged Mr. Williams to demonstrate that he has admissible evidence with which to meet his burden of proof, and Mr. Williams has failed to respond. In fact, the State has gone further, and demonstrated that on many of Mr. Williams's claims, it is entitled to summary judgment not simply because of Mr.

Williams's effective default, but on the merits, as established by the undisputed facts. Accordingly, the court denies Mr. Williams's motion and grants the State's. Judgment for the State, dismissing all claims with prejudice, will issue forthwith.

Electronically signed pursuant to V.R.E.F. 9(d): 10/29/2021 11:40 AM



Samuel Hoar, Jr.
Superior Court Judge