

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2003-189 and 2003-357

JANUARY TERM, 2004

} APPEALED FROM:
}
} Chittenden Superior Court
}
In re Allen Rhaeume } DOCKET NO. S0728-00Cnc
}
} Trial Judge: Matthew I. Katz
}
}

In the above-entitled cause, the Clerk will enter:

Petitioner Allen Rhaeume appeals pro se from the trial court's dismissal of his petition for post-conviction relief and its entry order on remand upholding its dismissal order. Rhaeume argues that the court erroneously concluded that he wanted to dismiss his PCR petition. We affirm.

In November 1998, Rhaeume filed a pro se PCR petition challenging his conviction for unlawful trespass. He then filed a pro se motion seeking dismissal of the petition without prejudice, which the court granted. In June 2000, Rhaeume filed another PCR petition challenging his unlawful trespass conviction, and he was appointed counsel. A hearing on the merits was scheduled for April 2002 and continued at PCR counsel's request pending the completion of a hearing on petitioner's mental competency in an unrelated criminal case. In July 2002, Rhaeume sent the following letter to the court: A Dear Court Clerk, In Re: Allen Rhaeume[,]Unlawfull [sic] Restraight [sic][,]Disorderly Conduct[,] Motion to Withdraw Guilty Plea [,] I would like to dismiss this P.C.R. that has been filed in the above matter.@ Case number A S0728-00Ca,@ which corresponds to the PCR at issue here, appears at the top of the document.

Rhaeume's dismissal request and his pending competency evaluation were discussed at status conferences held in September and December 2002. At the December 2002 conference, PCR counsel informed the court that Rhaeume told him to A drop the case.@ The court stated that Rhaeume's PCR petition would be dismissed on February 28, 2003, A unless cause sooner shown.@ On March 6, 2003, Rhaeume filed a letter asking if his PCR petition was still active. The court dismissed the petition on March 26, 2003 because petitioner had failed to show cause why it should not be dismissed. Rhaeume appealed.

While this appeal was pending, Rhaeume filed a motion for a stay with this Court pursuant to V.R.A.P. 8(a) and V.R.A.P. 27(a). Rhaeume asserted that he discovered through the brief filed by the State in this appeal that the trial court clerk had written the wrong docket number on his letter requesting dismissal of his PCR petition. He asked the Court to remand his appeal to allow the trial court to correct this error pursuant to V.R.C.P. 60(a) and (b). He also requested leave to file a Rule 60(a) and (b) motion with the trial court. On July 22, 2003, we remanded the case to the trial court for sixty days to allow the court to address the issue raised in Rhaeume's motion. On July 25, 2003, Rhaeume filed a motion for relief from judgment with the trial court, arguing that he was entitled to relief under V.R.C.P. 60(a) and (b) because the trial court clerk had written the wrong docket number on his dismissal letter.

On August 1, 2003, the trial court issued an entry order rejecting Rhaeume's assertion that his dismissal letter applied to another matter. The court explained that the PCR at issue in this case was the only pending action to which Rhaeume's request could have applied. The court also noted that it had been informed by Rhaeume's attorney that Rhaeume wanted to dismiss his petition. The court added that, while there may have been a question of Rhaeume's

competence, it understood that a contemporaneous proceeding in the district court had resulted in a finding of competence. Thus, the court found no reason not to honor Rhaeume's request to dismiss his PCR petition. Rhaeume filed a notice of appeal from the court's August 2003 entry order, and his appeals were consolidated.

Rhaeume raises a number of arguments on appeal. He asserts that his conviction was unlawful, that the State failed to file a written answer to his PCR petition, and that the trial court failed to rule on his motion for default judgment. He also argues that the trial court erred in dismissing his PCR petition because it misconstrued a letter that he wrote requesting dismissal. As to this latter argument, Rhaeume asserts that his dismissal request did not refer to his PCR petition but was intended to inform the court that he no longer wanted to withdraw his guilty pleas with respect to charges against him for unlawful restraint and disorderly conduct. He maintains that the court clerk misdocketed the letter.

A When considering a PCR appeal, we review the superior court's findings of fact under the clearly erroneous standard. @ In re Washington, 2003 VT 98, & 8, 14 Vt. L. Wk. 311 (2003) (mem.). If the court's conclusions follow from its findings, they must be affirmed. Id. In this case, the trial court dismissed Rhaeume's PCR petition after Rhaeume failed to respond to a show cause order. The court reiterated its conclusion in an August 1, 2003 entry order. The evidence supports the court's findings. The record shows that Rhaeume sent a letter requesting dismissal of his PCR petition to the court, and there was only one pending PCR petition to which the letter could apply. Rhaeume's attorney informed the court that Rhaeume wanted to A drop the case. @ Rhaeume did not respond to the court's order to show cause, and as the trial court explained, it had no reason to doubt Rhaeume's competency. The court's findings are supported by the record and its conclusion that Rhaeume's petition should be dismissed follows from its findings.

Although the trial court's decision of August 1, 2003 was not explicitly framed as a response to a motion for relief from judgment under Rule 60, we find no basis for disturbing the court's ruling. To the extent that the trial court's August 1, 2003 entry order constitutes a denial of Rhaeume's Rule 60(a) and (b) motion, as Rhaeume argues in his notice of appeal, we find no abuse of discretion. Rule 60(a) allows the court to correct A [c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission @ The court rejected Rhaeume's argument that a court clerk had mistitled his dismissal letter, explaining that there was only one pending action to which Rhaeume's letter could have applied. Rhaeume has not shown that the court abused its discretion in reaching this conclusion.

Rule 60(b) allows the court to relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect or any other reason justifying relief from the operation of the judgment. The trial court has broad discretion in deciding a V.R.C.P. 60(b) motion and its decision A will stand on review unless the record clearly and affirmatively indicates that such discretion was withheld or otherwise abused. @ Bingham v. Tenney, 154 Vt. 96, 99 (1990). In his Rule 60 motion, Rhaeume asserted that he was entitled to relief from judgment because the court clerk had mistitled his dismissal request. While the trial court did not engage in an explicit Rule 60(b) analysis, it rejected Rhaeume's argument that his dismissal request had been applied to the wrong case. As discussed above, the evidence supports the court's conclusion that Rhaeume's PCR petition was properly dismissed. Because we conclude that his PCR petition was properly dismissed, we do not address the additional arguments Rhaeume raises in his briefs.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice