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2001 Survey of Rhode Island Law: Cases: Constitutional Law

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Constitutional Law. *Brennan v. Vose*, 764 A.2d 168 (R.I. 2001). Appeal from the denial of an application for postconviction relief on the grounds of ineffective assistance of counsel and the denial by the hearing justice to grant a new trial based upon a claim of newly discovered evidence. The Rhode Island Supreme Court explicitly refused to create a new rule requiring trial justices to inquire into whether or not a defendant has willingly and knowingly given up their right to testify on their own behalf.

FACTS AND TRAVEL

In January of 1984 an elderly resident of Providence was brutally murdered and his apartment ransacked.¹ The defendant, Mr. Michael Brennan and his brother Thomas were arrested, tried separately and convicted for felony murder.² The Rhode Island Supreme Court upheld both convictions.³ The defendant subsequently applied for and was denied post conviction relief leading to the instant appeal.⁴

ANALYSIS

The defendant's appeal alleged two primary points of error.⁵ First, that he was deprived of a fair trial by the ineffective assistance of his trial counsel.⁶ Second, that the post-conviction relief court erred by not granting a new trial upon newly discovered evidence.⁷

1. *Brennan v. Vose*, 764 A.2d 168, 170 (R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.*

5. The defendant raised a third point of error claiming that the post-conviction hearing judge should have corrected an error of fact that arose during the direct appeal of his conviction in the supreme court. The superior court held that it lacked the authority to correct a finding of fact made by the supreme court. The supreme court quickly dismissed this claim of error on procedural grounds. The court found that the defendant failed to file a motion for rehearing in the supreme court within five days of its ruling as required under Rule 25 of the S. Ct. R. of App. P. By not requesting a rehearing in the supreme court, the defendant waived his right to correct the alleged error. *Id.* at 174.

6. *Id.* at 170-73.

7. *Id.* at 173-74.

Ineffective Assistance of Counsel

The Rhode Island Supreme Court stated that an ineffective assistance of council claim will be evaluated under the two-part test laid out by the United States Supreme Court in *Strickland v. Washington*, and adopted by the Rhode Island Supreme Court in *Barboza v. State*.⁸ The first prong of the *Strickland* test requires that the defense counsel be so deficient as to have violated the constitutional protections of the Sixth Amendment.⁹ Satisfying this prong requires "that counsel's representation [fall] below an objective standard of reasonableness," given the facts of the specific situation.¹⁰ If this test is met, then the second prong requires that the deficient performance by counsel be shown to be so prejudicial that the defendant's right to a fair trial was jeopardized.¹¹

In this case, the defendant asserted that his counsel was ineffective for three reasons, (1) his counsel failed to adequately prepare the case, (2) his counsel refused to allow him to testify on his own behalf and (3) that he was denied the opportunity to assist in jury selection. The court dismissed each of these assertions.¹² The court found that Mr. Brennan's attorney was an experienced trial attorney and that there was no indication that he failed to properly prepare the case; that the defendant was involved in the jury selection process and that the defendant was in fact offered the opportunity to testify but voluntarily chose not to.¹³

The most significant development from this portion of the case is the court's refusal to adopt a rule requiring a trial justice to inquire whether or not the defendant has knowingly and voluntarily waived his/her right to testify.¹⁴ The court noted that while some jurisdictions require this proactive inquiry, the majority of jurisdictions do not.¹⁵ The supreme court has affirmatively decided to follow the majority position, leaving the burden of advising a defendant of their rights on the defence counsel and not the trial justice.¹⁶

8. *Id.* at 171 (citing *Barboza v. State*, 484 A.2d 881, 883 (R.I. 1984)).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 170-73.

13. *Id.*

14. *See id.* at 171-72.

15. *Id.*

16. *Id.* at 172.

Newly Discovered Evidence

The court also reiterated that motions for a new trial based upon newly discovered evidence are evaluated under the two-part test found in *McMaugh v. State*.¹⁷ The first part of this test requires the trial justice to carefully examine the proffered new evidence to determine if, under the circumstances, the evidence is in fact new evidence.¹⁸ This inquiry includes evaluating whether or not the defendant actively sought to uncover the evidence during the primary trial; whether the evidence is material to the actual issue and not simply cumulative or impeaching and that it would likely change the outcome of the trial.¹⁹ If this first requirement is satisfied then the hearing justice must determine if he/she feels the evidence is credible and warrants granting relief.²⁰

In this case, the alleged new evidence was a sworn affidavit from the defendant's brother stating that he had committed the murder.²¹ This confession came about after the brother had already been convicted of the murder and his chances for post-conviction relief were all but gone.²² As such, the supreme court found that the hearing justice did not abuse his discretion when it determined that the confession was unreliable and thus not worthy of consideration.²³

CONCLUSION

In *Brennan v. Vose*, the Rhode Island Supreme Court reiterated that the two part *Strickland* test will be applied to claims of ineffective assistance of council and that the two-part test found in *McMaugh* will be applied to claims for relief arising from newly discovered evidence. Further, the court definitively declined to require the trial court to actively investigate whether a defendant

17. *Id.* at 173 (citing *Fontaine v. State*, 602 A.2d 521, 524 (R.I. 1992); *State v. Lanoue*, 366 A.2d 725, 731 (R.I. 1976)).

18. *Id.*

19. *Id.* (citing *McMaugh*, 612 A.2d at 731 (citing *Fontaine*, 602 A.2d at 524; *State v. Brown*, 528 A.2d 1098, 1104 (R.I. 1987))).

20. *Id.* (citing *McMaugh*, 612 A.2d at 732).

21. *Id.*

22. *Id.* at 173-74.

23. *Id.* at 174.

has knowingly and willingly chosen to waive their right to testify in their own defense.

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