

Summary of SC93120, Clayton Dean Price v. State of Missouri

Appeal from the Taney County circuit court, Judge J. Edward Sweeney

Argued and submitted October 3, 2013; opinion issued February 25, 2014

Attorneys: The state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321; and Price was represented by Lincoln J. Knauer Jr. and Ginger K. Gooch of Husch Blackwell LLP in Springfield, (417) 268-4000.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals the circuit court's grant of post-conviction relief to an inmate who was granted leave to file his motion for relief more than four years out of time. In a 4-3 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri reverses the circuit court's judgment. The circuit court erred in proceeding on the inmate's untimely motion. The rule permitting the post-conviction motion has mandatory deadlines and states that failure to comply with the deadline constitutes a "complete waiver" of all claims for relief. The inmate's circumstances do not fall within the "abandonment" doctrine this Court has established regarding amended motions and other duties of counsel it appoints only after an indigent inmate has filed a timely initial motion. The inmate's circumstances also do not fall within the "active interference" exceptions this Court has established for rare circumstances in which an inmate's effort to file a timely initial motion is frustrated by the active interference of a third party on whom the inmate had to rely but could not control. To the extent this Court's 2008 decision in *McFadden v. State* suggests that opinion extends to abandonment rather than active third-party interference, it no longer should be followed.

Judge Laura Denvir Stith dissents. She would find that the inmate's claim properly is one of abandonment and would hold that this Court's prior decision in *McFadden v. State* was decided based on abandonment. Here, similarly to counsel in *McFadden*, defense counsel was acting in his role as counsel, not merely as a third party, in undertaking to prepare and file the inmate's post-conviction motion. Counsel then abandoned that undertaking, and in so doing abandoned the inmate. This abandonment permitted the circuit court to treat the post-conviction motion as timely and consider its merits. That is what the circuit court did in this case, and on review it devoted many pages to detailing the deficiencies of the inmate's trial counsel. The author would affirm the circuit court's judgment that the inmate would not have been convicted but for counsel's errors.

Facts: Clayton Dean Price was found guilty following a jury trial and subsequently was sentenced to 12 years in prison. At the sentencing hearing, the circuit court advised Price that, if he wished to seek post-conviction relief under Rule 29.15, it was his responsibility to complete Criminal Procedure Form No. 40 and to file it with the court on or before the applicable deadline. The court explained that, if Price did not appeal his conviction, the deadline for filing the motion would be 180 days after his arrival at the department of corrections, but that if he did appeal but was not successful, the deadline would be 90 days after the appeals court issued its mandate affirming his conviction. When asked if he understood these deadlines, Price expressly

confirmed that he did. Price appealed, and his conviction was affirmed. The appeals court issued its mandate in July 2005, giving Price until October 2005 to file his post-conviction relief motion. He did not file a motion, however, until December 2009, more than four years after the deadline had passed. In his motion, Price asserted he should be excused for missing the deadline because he was abandoned by his post-conviction counsel. In an affidavit supporting the motion, Price's counsel stated he was incorrect about the proper deadline and did not discover his error until more than four weeks after the deadline had passed. The state moved to dismiss Price's motion as untimely. Following a hearing, the circuit court overruled the state's motion and granted Price's motion for leave to file his Rule 29.15 motion out of time. In October 2011, following an evidentiary hearing regarding Price's substantive claims, the circuit court granted him relief, vacating his conviction. The state appeals.

REVERSED.

Court en banc holds: The circuit court erred in proceeding on Price's untimely motion because Price waived all claims for relief when he failed to file his motion within the time allowed.

(1) The purposes of Rule 29.15(b) are to adjudicate claims concerning the validity of the trial court's jurisdiction and the legality of the defendant's conviction or sentence while avoiding delay in processing prisoners' claims and preventing the litigation of stale claims. Because these purposes come at the expense of the public's substantial interest in preserving the finality of criminal convictions, a balance is struck through the requirement that an inmate must initiate his post-conviction proceedings within the time allowed by the rule. Rule 29.15(b) specifies that failure to file a motion within the time provided "shall constitute a complete waiver" of any right to proceed under the rule and of any claim that could be raised in such a motion. The deadline and "complete waiver" provisions of Rule 29.15(b) are mandatory and have not been held to be unconstitutional. The state cannot waive them, and courts have a duty to enforce them.

(2) The abandonment doctrine created in this Court's precedence cannot excuse an inmate's failure to file his initial post-conviction motion on time and will not protect an inmate from the "complete waiver" provisions of Rule 29.15(b). The initial motion under this rule requires no legal expertise or assistance and is designed to be an informal filing that can be completed by an inmate acting alone. Although there is no federal constitutional right to post-conviction proceedings and, therefore, also no requirement that counsel be provided to indigent inmates when a state chooses to make such proceedings available, Rule 29.15(e) provides that counsel will be appointed for indigent inmates – but only after the inmate timely files his initial post-conviction relief motion. Because there is no constitutional right to post-conviction counsel, however, there can be no claims raised based on the alleged ineffective assistance of such counsel. The rationale behind this Court's "abandonment doctrine" – created in 1991 in *Luleff v. State* and *Sanders v. State* – was to not to police the performance of post-conviction counsel generally but to ensure that the provisions of Rule 29.15(e) (regarding appointed counsel and amended motions) work as intended. As such, the doctrine applies only to amended motions filed by appointed counsel. In the wake of *Luleff* and *Sanders*, however, the court of appeals began reaching inconsistent results as to whether abandonment could be invoked as an excuse for an untimely initial motion. This Court resolved this split in authority in 1993 in *Bullard v. State*, squarely rejecting any extension of *Luleff* and *Sanders* and specifically refusing to extend the

abandonment doctrine to excuse a tardy initial motion on the basis that counsel failed to draft and file the motion on time. Such claims are indistinguishable from claims of ineffective assistance of post-conviction counsel, which this Court does not allow. Because the facts of Price's case are, in all material respects, indistinguishable from the facts in *Bullard*, there is no basis for this Court to reach a contrary result.

(3) This Court also has excused an inmate's failure to file a timely initial motion under Rule 29.15(b) in rare circumstances in which the inmate's reasonable, good faith effort to write and timely file an initial motion is frustrated by the active interference of a third party on whom the inmate had to rely but could not control. This "active interference" exception, however, does not apply in Price's circumstances. He did not do all that he could to effect a timely filing of his Rule 29.15 motion; he did not write his initial motion and took no steps to meet or even calculate the applicable deadline for filing his motion. Rather, the only action he took was to retain counsel to fulfill his responsibilities on his behalf, choosing to bind himself to counsel's performance as though it were his own. Even assuming there was a breach of counsel's duties to Price, the breach did not violate Price's constitutional rights and was not tantamount to a violation of the court's obligations under Rule 29.15(e); therefore, the courts have no obligation to remedy it.

(4) This Court's 2008 decision in *McFadden v. State* is based on third-party interference, not abandonment. In *McFadden*, the inmate wrote his initial post-conviction motion, signed it, had it notarized and was prepared to mail it to the circuit court well before the deadline. Before he could do so, however, the public defender who represented him at trial contacted him and expressly directed him to mail his completed, signed, notarized petition to her and not to the circuit court. The inmate did as he was instructed, and even though the public defender received the motion two weeks before the Rule 29.15(b) deadline, she failed to file it on time. On the basis of these "unique circumstances," the Court held the inmate was entitled to proceed notwithstanding his tardy filing. Ultimately, despite any manner in which the parties framed the issues in *McFadden*, the central issue in that case was not the existence of the attorney-client relationship but rather the fact that, even though it was the inmate's attorney whose active interference caused the inmate's motion to be filed late, the inmate relied on her only to deliver the motion as prepared. It is only this fact that allows *McFadden* to avoid the otherwise controlling effect of *Bullard* because counsel failed the inmate as a courier, not by providing incompetent legal advice or ineffective representation.

(5) *McFadden* does not apply, let alone extend, the abandonment doctrine from *Luleff* and *Sanders*, nor has this Court since viewed *McFadden* as applying anything other than the active interference exception. Regardless, the decision has led to a proliferation of abandonment claims well beyond its intended scope and has created unnecessary uncertainty regarding the effect of the waiver provisions of Rule 29.15(b). To clarify, *McFadden* did not alter or restrict the holding in *Bullard* that the abandonment doctrine is limited to appointed counsel and the timeliness of amended motions under Rule 29.15(e) and (g) and, therefore, that abandonment cannot excuse the tardiness of an initial motion under Rule 29.15(b). *McFadden* stands only for the proposition that, when an inmate prepares his initial motion and does all he reasonably can to ensure it is filed on time, tardiness resulting solely from the active interference of a third party beyond the inmate's control may be excused and the waiver imposed by Rule 29.15(b) not enforced. To the extent *McFadden* suggests otherwise, it no longer should be followed.

Dissenting opinion by Judge Stith: (1) The author would find that Price's claim *is* properly one of abandonment and that *McFadden v. State* is right on point. In *McFadden*, the Court concluded that the inmate, "having been abandoned by counsel who undertook to perform a necessary filing and then simply failed to do so ... is entitled to relief ... Such active interference, as demonstrated here, constitutes abandonment." *McFadden* referred to active interference cases because counsel's conduct was by counsel, but it occurred before the pro se motion was filed. But it distinguished both the active interference cases, which dealt with the conduct of non-attorney third parties, as well as *Bullard v. State*, in which counsel advised his client incorrectly about the law. This Court should not revisit or limit *McFadden* now. Counsel is not a random third party, and the principal opinion errs in treating this case as if that were all it involves. Rather, the question it should answer is whether it was reasonable for Price to rely on counsel to prepare, and not just file, the initial motion, given that the rules say an inmate is to prepare and file the pro se motion. The author would resolve the question by holding that, for the reasons set out in *McFadden*, if an inmate is represented by counsel for purposes of filing a post-conviction motion and counsel undertakes to file the motion but does not do so, then the inmate has been abandoned.

(2) The author then would consider the merits of Price's post-conviction motion. Noting the circuit court devoted 22 pages of its 51-page judgment to detailing 10 aspects of trial counsel's deficient performance, the author would affirm the circuit court's judgment that Price would not have been convicted but for counsel's errors.