

203 Conn. App. 141

MARCH, 2021

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Velez v. Commissioner of Correction

ANTHONY VELEZ v. COMMISSIONER
OF CORRECTION
(AC 42446)

Lavine, Alvord and Cradle, Js.*

Syllabus

The petitioner, who had been convicted of the crimes of murder, burglary in the first degree and criminal mischief in the first degree, filed a second petition for a writ of habeas corpus, claiming that his prior habeas counsel had provided ineffective assistance. The habeas court, upon the request of the respondent Commissioner of Correction, issued an order to show cause why the petition, which was filed in August, 2015, should be permitted to proceed in light of the fact that the petitioner had filed it beyond the October 1, 2014 deadline for successive petitions set forth in the applicable statute (§ 52-470 (d) (2)). The court conducted an evidentiary hearing, during which the petitioner presented a 2005 report of a neuropsychological evaluation of the petitioner, which described in depth his mental deficiencies. The petitioner asserted that those deficiencies established good cause for his delay in filing the second habeas petition because they prevented him from obtaining the legal assistance while he was incarcerated to file it in a timely manner. The habeas court dismissed the petition pursuant to § 52-470 (e) for lack of good cause for the delay in filing the successive petition, concluding that, although the petitioner's mental deficiencies were significant, he failed to prove that they contributed to his delay in filing the petition. Thereafter, the petitioner, on the granting of certification, appealed to this court. *Held* that the habeas court did not abuse its discretion in determining that the petitioner failed to establish good cause for the delay in filing the second habeas petition and correctly dismissed it pursuant to § 52-470 (d) and (e); contrary to the petitioner's claim, that court properly determined that the petitioner failed to prove that his mental deficiencies, as described in the 2005 report, contributed to his delay in filing the second habeas petition and, thus, failed to rebut the presumption of unreasonable delay set forth in § 52-470 (d), as the record indicated that the petitioner presented no evidence of the nature of his deficiencies during the relevant time frame or how they contributed to the delay in filing the second habeas petition, and the court's determination was supported by the petitioner's having obtained a general equivalency diploma and having completed college classes and his success in filing two habeas petitions as a self-represented party, despite the alleged prevalence of his deficiencies.

Argued September 8, 2020—officially released March 9, 2021

*The listing of judges reflects their seniority status on this court as of the date of oral argument.

NOTE: These pages (203 Conn. App. 141 and 142) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 9 March 2021.

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Procedural History

Petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland, where the court, *Bhatt, J.*; rendered judgment dismissing the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Michael W. Brown, for the appellant (petitioner).

Sarah Hanna, senior assistant state's attorney, with whom, on the brief, were *Brian Preleski*, state's attorney, and *Jo Anne Sulik*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

ALVORD, J. The petitioner, Anthony Velez, appeals from the judgment of the habeas court dismissing his successive petition for a writ of habeas corpus pursuant to General Statutes § 52-470 (d) and (e).¹ On appeal,

¹ General Statutes § 52-470 provides in relevant part: "(a) The court or judge hearing any habeas corpus shall proceed in a summary way to determine the facts and issues of the case, by hearing the testimony and arguments in the case, and shall inquire fully into the cause of imprisonment and thereupon dispose of the case as law and justice require. . . .

"(d) In the case of a petition filed subsequent to a judgment on a prior petition challenging the same conviction, there shall be a rebuttable presumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed after the later of the following: (1) Two years after the date on which the judgment in the prior petition is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2014; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. For the purposes of this section, the withdrawal of a prior petition challenging the same conviction shall not constitute a judgment. The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction. Nothing in this subsection shall create or enlarge the right of the petitioner to file a subsequent petition under applicable law.

"(e) In a case in which the rebuttable presumption of delay . . . applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or,