

205 Conn. App. 243

JUNE, 2021

253

Zachs v. Commissioner of Correction

state”⁴ during his argument with the victim as a result of his post-traumatic stress disorder and ultimately concluded that the dissociative state “had a major impact on his ability to control his behavior. . . . He was out of control because of the dissociative state.”

The state presented rebuttal evidence from Anne M. Phillips, a clinical psychologist, and Peter M. Zeman, a psychiatrist. Dr. Phillips concluded, on the basis of her two interviews with the petitioner, that there was no evidence of cognitive impairment, a neuropsychological deficit, a thought disorder, or an impulse disorder. Dr. Zeman concluded, on the basis of his four interviews with the petitioner, that the petitioner did suffer from post-traumatic stress disorder of moderate intensity as a result of the break-in incident and that the petitioner experienced feelings of “depersonalization,” a “very much more limited kind of dissociative phenomena” during the confrontation with the victim. Dr. Zeman ultimately concluded, however, that the petitioner did not enter a “full-blow[n] dissociative state” and that there was no evidence of “blocking of thought” or delusions.⁵ He further concluded that “[the petitioner’s] psychiatric condition did not substantially affect his behavior or his control at that time.” The state also presented a number of lay witnesses in rebuttal who testified about two prior incidents during which the petitioner drew guns on other individuals.

⁴ Dr. Opsahl defined dissociative state as “a technical term used to describe when a person essentially loses control of the person they are and becomes someone else or goes somewhere else in mental terms.”

⁵ Dr. Zeman defined “blocking of thought, thought disorder, and delusional thinking [as] all terms which describe a psychotic state of mind in which somebody who’s extremely out of touch with reality on the basis, for example, of a psychotic illness such as schizophrenia, will have a jumbling of his or her thinking, thoughts will be confused, jumbled, out of order or there may be long periods of what are called blocking of thought where there’s lapses of thought as if somebody’s thoughts have just shut off and then start up again. I saw—I saw no evidence of that in my evaluation of [the petitioner].”

NOTE: These pages (205 Conn. App. 253 and 254) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 15 June 2021.

254

JUNE, 2021

205 Conn. App. 243

Zachs v. Commissioner of Correction

Attorney Daly requested jury instructions on the affirmative defenses of not guilty by reason of mental disease or defect and extreme emotional disturbance,⁶ as well as lesser included offenses of manslaughter in the first degree, manslaughter in the second degree, and criminally negligent homicide.⁷

We first set forth the general principles surrounding ineffective assistance of counsel claims and our standard of review. “In *Strickland v. Washington*, [supra,

⁶ The affirmative defense of mental disease or defect is a defense in “any prosecution for an offense” and provides that “it shall be an affirmative defense that the defendant, at the time the defendant committed the proscribed act or acts, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law.” General Statutes § 53a-13 (a).

Extreme emotional disturbance, an affirmative defense that reduces the crime of murder to manslaughter, is set forth in the applicable statute defining murder: “[I]t shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant’s situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.” General Statutes § 53a-54a (a).

⁷ “A person is guilty of manslaughter in the first degree when: (1) With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or (2) with intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he committed the proscribed act or acts under the influence of extreme emotional disturbance, as provided in subsection (a) of section 53a-54a, except that the fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subsection; or (3) under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person.” General Statutes § 53a-55 (a).

“A person is guilty of manslaughter in the second degree when: (1) He recklessly causes the death of another person; or (2) he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide.” General Statutes § 53a-56 (a).

“A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person, except where the defendant caused such death by a motor vehicle.” General Statutes § 53a-58 (a).