

Supreme Court

No. 2013-263-Appeal.
(PM 10-4824)

Joshua Davis :
v. :
State of Rhode Island. :

ORDER

This appeal from the Superior Court’s denial of an application for postconviction relief came before the Supreme Court pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not be summarily decided. After a close review of the record and careful consideration of the parties’ arguments (both written and oral), we are satisfied that cause has not been shown and that this appeal may be decided at this time.

On April 17, 2008, Joshua Davis pled guilty to one count of first-degree murder, in violation of G.L. 1956 § 11-23-1 and § 11-23-2; one count of first-degree child molestation, in violation of G.L. 1956 § 11-37-8.1 and § 11-37-8.2; and one count of kidnapping of a minor, in violation of G.L. 1956 § 11-26-1.4. On June 25, 2008, Mr. Davis was sentenced to life in prison without parole on the murder count, life in prison on the count of first-degree child molestation to be served consecutive to his sentence on the first count, and life in prison on the charge of kidnapping of a minor to be served consecutive to his sentences on the first two counts. Mr. Davis filed an application for postconviction relief on August 18, 2010, alleging six separate

grounds for relief. After reviewing all the evidence, his court-appointed attorney filed a seventy-five page “no-merit” memorandum and moved to withdraw from the case, in accordance with the procedures outlined by this Court in Shatney v. State, 755 A.2d 130, 135 (R.I. 2000). The attorney was permitted to withdraw during a hearing in the Superior Court on July 27, 2011. The hearing justice then said that a separate hearing with respect to the merits of the postconviction relief application would be held at a later date; she did so in order to give Mr. Davis time to draft a memorandum and prepare for the further hearing. On November 15, 2011, almost four months after the hearing in which his court-appointed attorney was permitted to withdraw, Mr. Davis was afforded a hearing on his application. At the end of that hearing, the hearing justice denied Mr. Davis’s application for postconviction relief. Mr. Davis contends on appeal that he was not given an adequate opportunity to make his argument to the Superior Court.

The record indicates that Mr. Davis was given the opportunity to address his court-appointed attorney’s “no-merit” memorandum at the July 27, 2011 hearing. At the November 15, 2011 hearing, the hearing justice afforded Mr. Davis the opportunity to address his contentions. However, it is undisputed that Mr. Davis (a person serving a sentence of life without parole) did not receive an evidentiary hearing. It will be recalled that, on May 21, 2012, this Court ruled as follows: “[F]rom this point forward, an evidentiary hearing is required in the first application for postconviction relief in all cases involving applicants sentenced to life without the possibility of parole.” Tassone v. State, 42 A.3d 1277, 1287 (R.I. 2012). We acknowledge that our decision in Tassone had not been issued at the time of the above-described hearings relative to Mr. Davis’s motion for postconviction relief and that it was prospective in nature. Nevertheless, taking into account both the fact that Mr. Davis was sentenced to life without parole on one of the counts of which he stands convicted after entering a guilty plea and

the particular circumstances of this case and bearing in mind the interests of justice, we have concluded that Mr. Davis should be afforded an evidentiary hearing.

Accordingly, we remand this case to the Superior Court with directions to appoint new counsel and to conduct an evidentiary hearing on Mr. Davis's application for postconviction relief.

Entered as an Order of this Court, this 12th day of November, 2015.

By Order,

/s/

Clerk

Justice Indeglia did not participate.



RHODE ISLAND SUPREME COURT CLERK'S OFFICE

Clerk's Office Order/Opinion Cover Sheet

TITLE OF CASE: Joshua Davis v. State of Rhode Island.

CASE NO: No. 2013-263-Appeal.
(PM 10-4824)

COURT: Supreme Court

DATE ORDER FILED: November 12, 2015

JUSTICES: Suttell, C.J., Goldberg, Flaherty, and Robinson, JJ.

WRITTEN BY: N/A – Court Order

SOURCE OF APPEAL: Providence County Superior Court

JUDGE FROM LOWER COURT:

Associate Justice Susan E. McGuirl

ATTORNEYS ON APPEAL:

For Applicant: Christopher S. Gontarz, Esq.

For Defendant: Jeanine P. McConaghy
Department of Attorney General