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Commonwealth v Benchoff

Commonwealth of Pennsylvania v. Robert E. Benchoff, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 872-1994, 150-1995

HEADNOTES

Post Conviction Relief Act; Timeliness; Effective Assistance of Counsel; Retroactivity

1. A petition for relief pursuant to the Post Conviction Relief Act may be filed outside of the one year time limit if the right asserted has been recognized by the Supreme Court of the United States or Pennsylvania and has been held to apply retroactively. 42 Pa. Con. Stat. § 9545(b)(1)(iii)
2. A defendant has the right to effective assistance of counsel during the plea bargaining process.
3. The right to effective assistance of counsel during the plea bargaining process is not a new right. Rather it is an extension of the scope of Strickland v. Washington, 466 U.S. 668, (1984).
4. A petitioner bears the burden of establishing that a right is a new rule and that it has been held to apply retroactively.
5. The right to effective assistance of counsel during the plea bargaining process has not been held to apply retroactively.

Appearances:

Franklin County District Attorney

Robert E. Benchoff, pro se, Petitioner

OPINION

Before Herman, J.

This matter came before us by way of a petition for relief pursuant to the Post Conviction Relief Act (PCRA) filed May 8, 2012. The Court issued a Notice of Intention to Dismiss on August 13, 2012. Following our notice and noting that no additional issues or arguments had been raised in a response, we entered an Order dismissing the petition on September 7, 2012. Petitioner now appeals our September 7, 2012 Order dismissing his PCRA petition.

It is undisputed that this petition was filed well outside the one-year period for filing a petition for relief. Further, we note that this was a second petition for relief – the first having been dismissed in 2004. However, the Petitioner, Robert E. Benchoff, asserted that his PCRA petition was timely pursuant to 42 Pa. Con. Stat. § 9545(b)(1)(iii) which allows a petition to be filed outside the usual one-year mark if “the right asserted is a constitutional right recognized by the Supreme Court of the United States or . . . Pennsylvania . . . and has been held to apply retroactively.” The right he asserted was based upon the sister cases of Lafler v. Cooper, 132 S.Ct. 1376 (2012) and Missouri v. Frye, 132 S.Ct. 1399 (2012) in which the right of ineffective assistance of counsel was extended to the plea bargaining process.

On August 13, 2012, we entered a Notice of Intention to Dismiss and informed the petitioner of our reasoning. In the Notice, we indicated that upon review of these cases, it is apparent that no new rule of law has been created. Rather, the Supreme Court extended the scope of the Strickland standard which has been in place for nearly three decades. Strickland v. Washington, 466 U.S. 668, (1984). Where new case law merely applies an old precedent, no new rule of law is created. See Commonwealth v. Wojtaszek, 951 A.2d 1169 (Pa. Super. 2008). We found that Lafler and Cooper merely expanded the scope of the Strickland standard and did not create a new right. See also Hare v. U.S., 688 F.3d 878, 2012 WL 3156329 (7th Cir., 2012) (“The Frye Court merely applied the Sixth Amendment right to effective assistance of counsel according to the test first articulated in Strickland” and “did not announce a new rule of constitutional law”); In re Perez, 682 F.3d 930 (11th Cir., 2012) (“Lafler and Frye are not new rules because they were dictated by Strickland”).

Additionally, we found that neither Lafler nor Frye contained a holding that their holdings were to be applied retroactively.

Pursuant to the timeliness exception which Petitioner asserts, § 9545(b)(1)(iii), the new right must have been held to apply retroactively. See also Wojtaszek, 951 A.2d at 1171. Upon review of the two opinions, we were unable to find a holding which indicated that the Supreme Court intended Lafler or Frye be applied retroactively.

"[A] petitioner must prove that there is a 'new' constitutional right and that the right 'has been held' by that court to apply retroactively." Wojtaszek, 951 A.2d at 1171. In his petition and response to our notice, Petitioner proved neither. For these reasons, the Court dismissed the petition for relief pursuant to the PCRA.

We further note that we did not grant Petitioner's requires for counsel. Pursuant to Pa. R. Crim. P. 904 (C), Petitioner was not entitled to counsel because this was not his first petition for relief under this act. Further, for the reasons described above, there was no need for an evidentiary hearing, Pa. R. Crim. P. 904(D). Finally, due to the lack of legal merit, the interest of justice did not require that an attorney be appointed to represent the petitioner Pa. R. Crim. P. 904(E).

We submit that no error was made at any point in this proceeding and request that our Order dated September 7, 2012 dismissing the petition for relief be affirmed.