

DIVISION OF ST. THOMAS AND ST. JOHN

Respondent.

)
)
)
)
)
)
) **CASE NO. ST-17-MC-17**
)
)
)
)
)
)
)
)
)

As he was carrying groceries from his car to his residence at Apartment No. 64, Building No. 8, Paul M. Pearson housing community on October 8, 2011, Pedro Ortiz was accosted by two masked assailants with guns who forcibly removed Ortiz's gold chain necklace, gold bracelet, ring, and wallet. Ortiz's assailants fit the description of two individuals he had encountered five minutes earlier at Building No. 8, one of whom was a tall, light skinned, African-American male with braids that Ortiz had seen near Building No. 21 Oswald Harris Court earlier that day.¹ Ortiz did not know the tall man personally, but had observed him previously at Oswald Harris Court,² at Pizza Hut,³ and at Paul M. Pearson.⁴ The other assailant was a shorter African-American male who was darker in

⁴ *Id.*, at page 16.

complexion and had a low cut hairstyle. Both individuals were wearing white t-shirts, blue jeans, and white shoes.⁵

After calling the police, Ortiz traveled to the police station where he reviewed books containing photos, ultimately identifying Orel Destin as one of his assailants. Ortiz's wallet was later retrieved near a trash bin close to Waterfront Avenue. The money in the wallet and Ortiz's jewelry were never recovered.

Destin was arrested and charged with second degree robbery, first degree assault, grand larceny, and using a dangerous weapon during a crime of violence.⁶ Following a jury trial on February 17, 2015, and February 18, 2015, Destin was found guilty on all four counts, and on April 17, 2015, Petitioner was sentenced to fifteen years in prison. In accordance with the habitual offender statute, 14 V.I.C. § 61, the trial court adjusted Destin's sentence so that he was eligible for parole after ten years of incarceration instead of after seven and a half years had he been a first time offender.

Destin filed an appeal with the Supreme Court of the Virgin Islands, and his appeal was dismissed in an Opinion and Order issued on March 21, 2016. Destin then filed his petition for writ of habeas corpus on March 23, 2017.

STANDARD

"Habeas corpus is an equitable remedy whereby individuals who are restrained in violation of their constitutional rights may seek release."⁷ Section 3 of the Revised Organic Act states that "[a]ll persons shall have the privilege of the writ of habeas corpus."⁸ In addition, the Virgin Islands Legislature "enacted chapter 91 of title 5 of the Virgin Islands

⁵ *Id.*, at pages 16, 23 and 24.

⁶ Initially, Petitioner was charged with three separate counts of using a dangerous weapon during the commission of a violent crime, but the trial court consolidated those charges into a single count.

⁷ *Ledesma v. Gov't of the V.I.*, 2016 V.I. LEXIS 167, *3 (V.I. Super. Ct. Oct. 13, 2016).

⁸ 48 U.S.C. § 1561.

Code [to] establish a procedure for seeking habeas corpus relief under Virgin Islands law, [which] codifies the right to habeas corpus and explains the process through which it can be obtained.”⁹ Under the statute, “every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.”¹⁰

“When presented with a petition for a writ of habeas corpus, [the Superior Court] must first determine whether the petition states a prima facie case for relief — that is, whether it states facts that, if true, entitle the petitioner to relief — and also whether the stated claims are for any reason procedurally barred.”¹¹ The habeas petitioner “bears the burden of proving the facts supporting the petition or establishing grounds entitling him to relief.”¹² “If a petitioner alleges that he is illegally imprisoned, the petition must state how the imprisonment is illegal.”¹³ “The petitioner must state specific factual allegations which require habeas relief rather than conclusory or speculative allegations.”¹⁴ In addition, “the habeas corpus petition is not a vehicle for directly appealing a conviction or relitigating trial.”¹⁵ As the Supreme Court of the Virgin Islands has stated, “a writ of habeas corpus is an inappropriate medium to rehash ... issues” decided at trial or on appeal.¹⁶

⁹ *Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 293-294, 2014 V.I. Supreme LEXIS 46, *13-15 (VI. 2014) (citing 5 V.I.C. §§ 1301-25).

¹⁰ *Id.*

¹¹ *Rivera-Moreno*, 61 V.I. at 311, (citing *People v. Romero*, 883 P.2d 388, 391 (1994) (explaining the habeas corpus procedure under California's nearly identical statutes)).

¹² *Ledesma*, 2016 V.I. LEXIS 167, *5-6.

¹³ *Id.*, citing 5 V.I.C. § 1302(2).

¹⁴ *Mitchell v. Wilson*, 62 V.I. 326, 330 (V.I. Super. Ct. 2015). See also *Townes v. Jarvis*, 577 F.3d 543, 550, 2009 U.S. App. LEXIS 16244, *17 (4th Cir. Va. 2009) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999)).

¹⁵ *Ledesma*, 2016 V.I. LEXIS 167, *3-5 (V.I. Super. Ct. Oct. 13, 2016) (citing *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 377 (V.I. 2013) (opining that “[i]t is settled legal precedent that criminal defendants are barred from using [post-conviction collateral attacks like habeas] to relitigate issues decided on direct appeal” (internal quotations and citation omitted))).

¹⁶ *Ibrahim v. Gov’t of the V.I.*, Civ. No. 2007/76, 2008 V.I. Supreme LEXIS 20, at *4 (V.I. Jan. 18, 2008).

“If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright,” but “if it appears that the writ ought to issue,” the Superior Court “shall grant [a writ of habeas corpus] without delay.”¹⁷ “Notably, the habeas corpus statute is procedural — the issuance of the writ does not decide the issues or guarantee the petitioner is entitled to relief.”¹⁸

ANALYSIS

In support of his petition, Destin contends that he received ineffective assistance of counsel and that his Fourteenth Amendment right to due process and Sixth Amendment right to a fair trial were violated.

a) Ineffective Assistance of Counsel

“The Sixth Amendment to the United States Constitution provides the accused the right to have assistance of counsel for his defense in criminal prosecutions.”¹⁹ “Proving ineffective assistance of counsel presents a high bar.”²⁰ A petitioner must establish that his trial counsel's performance “fell below an objective standard of reasonableness.”²¹ There is a “strong presumption that counsel's conduct falls within a wide range of reasonable

¹⁷ *Rivera-Moreno*, 61 V.I. at 311 (citing 5 V.I.C. § 1304).

¹⁸ *Ledesma*, 2016 V.I. LEXIS 167, *3-5 (citing *Rivera-Moreno*, 61 V.I. at 312).

¹⁹ *Castillo v. People of the Virgin Islands*, 59 V.I. 240, 282, 2013 V.I. Supreme LEXIS 34, *66, 2013 WL 3367303 (VI. July 2, 2013). The Sixth Amendment of the U.S. Constitution establishes that, in all criminal prosecutions, “the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.” It is well established that the “protections of the Sixth Amendment to the Constitution of the United States [have been extended] to the Virgin Islands.” *Rivera v. People of the Virgin Islands*, 64 V.I. 540, 561-562, 2016 V.I. Supreme LEXIS 16, *34 (VI. May 4, 2016).

²⁰ *Suarez v. Government of the Virgin Islands*, 56 V.I. 754, 759-760, 2012 V.I. Supreme LEXIS 49, *5-7, 2012 WL 2288434 (VI. June 13, 2012).

²¹ *Id.*, (citing *Corraspe v. People*, 53 V.I. 470, 479 (V.I. 2010) and *Hill v. Lockhart*, 474 U.S. 52, 57 (1985)).

professional assistance.”²² “Tactical decisions about which competent counsel might disagree do not qualify as objectively unreasonable.”²³

If a court determines that “trial counsel's conduct fell outside the zone of reasonable professional assistance,” a petitioner “must also affirmatively prove that his counsel's conduct prejudiced him in the proceeding so that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.”²⁴

In his direct appeal to the Supreme Court, Destin challenged his sentence under 14 V.I.C. § 62(b), which provides that, if the prosecution files an information under the habitual offender statute, the sentencing court shall:

inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

When the trial court inquired as to whether Destin had any objections to the habitual offender information during the sentencing hearing, the trial court addressed only Destin's counsel. The Supreme Court determined that, “although Destin's counsel answered the Superior Court rather than Destin personally, it is well-established that an attorney acts as an agent of a client and may waive a right — even one of constitutional magnitude, let alone a mere statutory right to an inquiry such as the one at issue in this case — on behalf of his client.”²⁵ The Supreme Court concluded that, “even though the Superior Court erred

²² *Suarez*, 56 V.I. at 760 (citing *Bell v. Cone*, 535 U.S. 685, 702 (2002)).

²³ *Suarez*, 56 V.I. at 760 (citing *Ibrahim v. Gov't of the V.I.*, S. Ct. Civ. No. 2007-76, 2008 V.I. Supreme LEXIS 20, at *2 (V.I. Jan. 18, 2008) and *Bell v. Cone*, 535 U.S. at 702).

²⁴ *Suarez*, 56 V.I. at 760 (citing *Corraspe*, 53 V.I. at 479-80 and *Hill*, 474 U.S. at 57).

²⁵ *Id.*, (citing *United States v. Bobo*, 586 F.2d 355, 364 n.6, 366 (5th Cir. 1978) (holding that a defendant and his attorney are “a single entity”).

in failing to advise Destin under section 62(b), that error is of no consequence, since Destin failed to challenge his prior conviction.”²⁶

In his petition for writ of habeas corpus, Petitioner does not state a basis for challenging his prior conviction. Instead, he argues that counsel’s performance was ineffective because counsel did not challenge the habitual offender information or object when the court addressed counsel rather than Destin.

There are no factual disputes material to the disposition of any issue raised in the Petition, so the Court can address them without conducting an evidentiary hearing. Considering that the trial court’s failure to comply with the habitual criminal statute was examined by the Supreme Court, which determined that the manner in which the trial court conducted the 14 V.I.C. § 62(b) inquiry was “of no consequence,” this Court cannot conclude that counsel’s performance was ineffective because counsel failed to object. Similarly, in the absence of sufficient grounds to challenge the validity of Destin’s prior conviction, there is no basis to conclude that counsel’s performance was ineffective for failure to object to sentencing under the habitual offender statute. As a consequence, Destin has failed to make a *prima facie* showing that his trial counsel’s performance fell below an objective standard of reasonableness or that he was prejudiced thereby.

b) Due Process and Right to a Fair Trial.

Petitioner also contends that the Virgin Islands Police Department violated his Fourteenth Amendment²⁷ right to due process and his Sixth Amendment²⁸ right to a fair

²⁶ *Destin v. People of the Virgin Islands*, 64 V.I. 465, 475, 2016 V.I. Supreme LEXIS 10, *16 (VI. Mar. 21, 2016).

²⁷ The Fourteenth Amendment to the United States Constitution “prohibits states from denying equal protection of the law to any person within their respective jurisdictions” and “applies to the Virgin Islands Government to the same extent it applies to the governments of the fifty states under section 3 of the Revised Organic Act of 1954.” *People of the V.I. v. Stevens*, 2015 V.I. LEXIS 30, *2, 63 V.I. 71, 73-74 (V.I. Super. Ct. 2015).

²⁸ See footnote 23 for the Sixth Amendment quoted in its entirety.

trial by failing to properly investigate the robbery. Petitioner asserts that the police did not interview Keith Roy Caines, a possible suspect to the crime, and that the investigating officers should have analyzed Ortiz's discarded wallet for fingerprints and should have examined video footage from security cameras located near the trash bin where Ortiz's wallet was found.

"Conducting a thorough, professional investigation is not an element of the government's case...A defendant may, however, rely upon relevant deficiencies or lapses in the police investigation to raise the specter of reasonable doubt, and the trial court violates his right to a fair trial by precluding the jury from considering evidence to that effect."²⁹

The record reflects that Petitioner's trial counsel thoroughly cross examined the investigating officers and elicited admissions that they did not question Keith Roy Caines, examine Ortiz's wallet for fingerprints, or review the security camera footage. The jury also heard testimony from two defense witnesses who observed a maroon Ford Taurus, owned by Valarie Martin Aubain, leaving the scene where Ortiz's wallet was discarded on October 8, 2011.³⁰ One defense witness, Mara Heilman, testified that the driver of the car appeared to be an African-American male with a light complexion.³¹ Defense witness Valarie Martin Aubain testified that her son Keith Roy Caines, deceased, was driving her Ford Taurus on October 8, 2011.³² Petitioner's sister, Cristal Destin, testified that her deceased husband, Keith Roy Caines, was a tall, light-skinned African-American male with braids.³³ The jury also heard testimony from Ortiz who stated that the son of a "clear

²⁹ *State v. Wright*, 322 Conn. 270, 282-283, 140 A.3d 939, 946, 2016 Conn. LEXIS 230, *21-22 (Conn. Aug. 2, 2016). See also *Kyles v. Whitley*, 514 U.S. 419, 446 (1995) (acknowledging that it is common and accepted tactic for defendants to challenge adequacy of police investigation).

³⁰ Trial Transcript, Volume II, at pages 61-67.

³¹ *Id.*, Volume II, at page 74,

³² *Id.*, at page 78.

³³ *Id.*, at page 125.

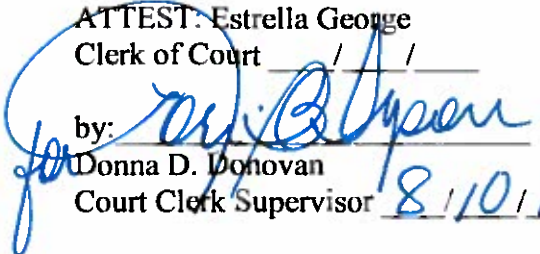
skinned woman [named] Sophie” was the person who robbed him.³⁴ Ultimately, however, the jury found Ortiz’s identification of Destin as his assailant more credible than the evidence presented by the defense.

“A motion for writ of habeas corpus is not the proper forum for challenging the credibility of witnesses.”³⁵ Instead, a petitioner is limited to raising arguments showing that his constitutional rights were violated. Here, Destin has not demonstrated that the trial court precluded Destin from presenting, or dissuaded the jury from considering, evidence concerning the VIPD’s allegedly shoddy investigation. Nor has Destin demonstrated that the trial court’s receipt of evidence regarding the investigation otherwise deprived Destin of a fair trial. As a consequence, Destin has failed to make a prima facie showing that his rights under the Sixth Amendment and Fourteenth Amendment were violated.

As a consequence, Destin’s petition for writ for habeas corpus will be denied. An Order consistent with this Opinion shall follow.

Dated: August 9, 2017

ATTEST: Estrella George
Clerk of Court

by: 
Donna D. Donovan
Court Clerk Supervisor

8/10/17


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

³⁴ *Id.*, at page 27.

³⁵ *Dowling v. Gov't of the V.I.*, 2002 V.I. LEXIS 14, *16, 44 V.I. 256, 264-265, 2002 WL 1446968 (V.I. Terr. Ct. May 14, 2002).