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Recent Developments: Ramirez v. State

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RECENT DEVELOPMENT

RAMIREZ V. STATE: WHEN A PETITIONER ALLEGES INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO COUNSEL'S FAILURE TO UNSEAT A JUROR, HE MUST PROVE NOT ONLY THAT COUNSEL'S PERFORMANCE WAS DEFICIENT, BUT ALSO THAT SAID PERFORMANCE PREJUDICED THE OUTCOME OF THE CASE.

By: Eunice Ahaghotu

The Court of Appeals of Maryland held that when a petitioner makes a claim of ineffective assistance of counsel based on counsel's failure to unseat a juror, the petitioner still has the burden to prove both deficient performance and prejudice. *Ramirez v. State*, 464 Md. 532, 541, 212 A.3d 363, 369 (2019). The court further held that a post-conviction allegation that counsel's performance resulted in structural error would not relieve a petitioner of its burden to prove prejudice. *Id.* at 541, 212 A.3d at 368. A presumption of prejudice should only be applied where the petitioner was actually denied assistance of counsel, constructively denied assistance of counsel, or petitioner's counsel had an actual conflict of interest. *Id.* at 541, 212 A.3d at 369. The court went on to explain that where the State has presented strong evidence of a petitioner's guilt, he generally will fail to prove that trial counsel's deficient performance prejudiced him. *Id.* at 577, 212 A.3d 390.

Edinson Herrera Ramirez ("Ramirez") was arrested and charged with eleven crimes in association with an armed robbery. *Ramirez*, 464 Md. at 539, 212 A.3d at 368. During *voir dire*, the Circuit Court for Carroll County asked all prospective jurors if they or any members of their families or close friends had ever been victims of a crime, accused of a crime, or witnesses in a criminal case, and if so, would that experience affect their ability to render a fair and impartial verdict. *Id.* at 539-40, 212 A.3d at 368. Juror 27 responded that their apartment was broken into and that this experience would affect their ability to render a fair and impartial verdict. *Id.* at 540, 212 A.3d at 368. Ramirez's counsel did not ask Juror 27 any follow-up questions, ask that the circuit court do so, move to strike Juror 27 for cause, or use a peremptory challenge. *Id.* at 540, 212 A.3d at 368. Counsel did, however, move to strike the wrong juror, Juror 25, for the response given by Juror 27 to the crime victim question. *Id.* at 540, 212 A.3d at 368. At trial, the State presented overwhelming evidence of Ramirez's guilt, including testimony and multiple pieces of physical evidence. *Ramirez*, 464 Md. at 579-80, 212 A.3d at 391. Ramirez was subsequently found guilty of all eleven counts. *Id.* at 540, 212 A.3d at 368.

Ramirez petitioned for post-conviction relief alleging ineffective assistance of counsel due to counsel's failure to move to strike Juror 27, and failure to exercise a peremptory challenge. *Ramirez*, 464 Md. at 540, 212 A.3d at 368. The circuit court denied Ramirez's petition. *Id.* at 540, 212 A.3d at 368. Ramirez then appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court's judgment. *Id.* at 541, 212 A.3d at 368. The Court of Special Appeals determined that even if trial counsel's performance was deficient, a presumption of prejudice did not apply, and Ramirez failed to prove prejudice. *Id.* at 557-58, 212 A.3d at 378. Thus, he had failed to prove ineffective assistance of counsel and was not entitled to post-conviction relief. *Id.* at 558, 212 A.3d at 378.

Ramirez then petitioned for a *writ of certiorari*, and the Court of Appeals of Maryland granted the petition. *Ramirez*, 464 Md. at 559, 212 A.3d at 379. Specifically, the Court of Appeals was asked to determine whether counsel's performance was deficient and, if so, whether a presumption of prejudice should apply. *Id.* at 539, 212 A.3d at 368. Alternatively, the court was asked to determine whether Ramirez had the burden to prove prejudice where he alleged that trial counsel's performance resulted in structural error. *Id.* at 539, 212 A.3d at 368. The court evaluated Ramirez's claim under the test set out by the Supreme Court for assessing ineffective assistance of counsel. *Id.* at 560, 212 A.3d at 380 (citing *Newton v. State*, 455 Md. 341, 356, 166 A.3d 1, 9 (2017)). To prevail, a petitioner must meet two prongs: the performance prong and the prejudice prong. *Id.* at 560, 212 A.3d at 380.

In order to satisfy the performance prong, it must be shown that "counsel's representation fell below an objective standard of reasonableness... under prevailing professional norms." *Ramirez*, 464 Md. at 561, 212 A.3d at 380 (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). The prejudice prong requires that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 561, 212 A.3d at 380. A court must hear the totality of the evidence before the jury. *Id.* at 562, 212 A.3d at 381. A verdict that is overwhelmingly supported by the evidence is less likely to satisfy the prejudice prong. *Id.* at 562, 212 A.3d at 381. Prejudice will only be presumed during three limited circumstances where (1) petitioner was actually denied the assistance of counsel; (2) petitioner was constructively denied the assistance of counsel; or (3) petitioner's counsel had an actual conflict of interest. *Id.* at 541, 212 A.3d at 369.

The Court of Appeals of Maryland determined that Ramirez met his burden to prove that counsel was deficient. *Ramirez*, 464 Md. at 566, 212 A.3d at 384. The court opined that no "reasonable lawyer" in counsel's position would have refrained from asking or requesting any follow-up questions of Juror 27. *Id.* at 56, 212 A.3d at 385. Additionally, the court

found no other explanation for counsel's motion to strike Juror 25 other than that counsel viewed Juror 27's response to the crime victim question as a cause to strike. *Id.* at 569, 212 A.3d at 385. Altogether, the court determined that counsel's performance fell below an objective standard of reasonableness. *Id.* at 570, 212 A.3d at 385.

Next, while counsel's performance was found to be deficient, the court could not conclude that counsel's deficient performance in this case resulted in structural error. *Ramirez*, 464 Md. at 573, 212 A.3d at 387-88. Moreover, a claim of structural error would not relieve Ramirez's burden to prove prejudice. *Id.* at 573, 212 A.3d at 388. The court again emphasized that a presumption of prejudice applies only in three limited circumstances and this case was not one of those circumstances. *Id.* at 577, 212 A.3d at 390. Prejudice will not merely be presumed because the petitioner alleged that counsel's performance resulted in structural error. *Id.* at 575, 212 A.3d at 389.

Ultimately, the Court of Appeals of Maryland decided that Ramirez satisfied the performance prong, but not the prejudice prong. *Ramirez*, 464 Md. at 577, 212 A.3d at 390. Specifically, the court concluded that Ramirez had failed to show that "there was a substantial or significant possibility that the verdicts were affected" by his counsel's deficient performance. *Id.* at 577, 212 A.3d at 390 (*quoting State v. Syed*, 463 Md. 60, 86-87, 204 A.3d 139, 154 (2019)). The evidence presented by the State led to such strong conclusions that the court decided there was no possibility that the verdict would have been different had counsel moved to strike Juror 27. *Id.* at 580, 212 A.3d at 392. Moreover, the jury did not submit any questions during deliberations and returned a verdict convicting Ramirez of all eleven charges within three hours. *Id.* at 580, 212 A.3d at 392.

The dissent pronounced that the prejudice inquiry should rest on the fundamental fairness of the proceeding. *Ramirez*, 464 Md. at 582, 212 A.3d at 393. This opinion further argued that defective performance by counsel, which results in the presence of a biased individual on the jury, deprives a defendant of their constitutional right to a fair trial. *Id.* at 583, 212 A.3d at 394. Accordingly, such performance that results in a fundamentally unfair trial is "prejudicial by definition." *Id.* at 583, 212 A.3d at 393.

In *Ramirez*, the Court of Appeals of Maryland concluded that where counsel's deficient performance may have resulted in the presence of a biased juror, a petitioner seeking post-conviction relief still must show prejudice. This decision will ensure that every petitioner who claims a mistake by counsel will not automatically be entitled to a new trial. The petitioner will have to show that counsel's mistake had a substantial effect on the fair administration of justice in their case. Though the dissent argues that this standard should not be used when a court is faced with deficient performance

that resulted in the presence of a biased juror, the fair administration of justice will not be threatened when the evidence presented by the State also strongly supports the resulting verdict.