

FILED
United States Court of Appeals
Tenth Circuit

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

JUN 20 1990

ROBERT L. HOECKER
Clerk

JAMES WALLACE WOLFE,
Petitioner-Appellant,

v.

DAN REYNOLDS, Warden, and
ROBERT HENRY, Attorney General
of the State of Oklahoma,
Respondents-Appellees.

No. 89-7067
(D.C. No. 88-701-C)
(E. Dist. of Oklahoma)

ORDER AND JUDGMENT*

Before MCKAY, ANDERSON, and BALDOCK, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); Tenth Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

The pro se petitioner, James Wolfe, was convicted in state court of first degree murder. At his trial, evidence of a statement which Wolfe had made to police officers after his arrest was introduced. Wolfe appealed his conviction in state court, arguing that admission of the statement was improper because the statement

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

was allegedly made during plea negotiations with the prosecutor. The Court of Criminal Appeals of Oklahoma rejected Wolfe's argument because Wolfe's defense counsel had failed to object to the admission of the evidence in a manner that would preserve the issue for appeal. Wolfe thereafter filed a petition for habeas corpus in the federal district court, contending that his counsel's failure in this regard constituted a denial of effective assistance of counsel. The district court denied his petition and this appeal followed.¹

On appeal, Wolfe contends that he was prejudiced by his counsel's failure because the statement which was admitted was extremely inculpatory and it was the result of: (1) threats, intimidation, and coercion by the interrogating police officers; and (2) Wolfe's belief that the statement was being made pursuant to a plea bargain negotiation. The district court found that, as a matter of fact, no threats or coercion was directed toward Wolfe, but that the statement had been made voluntarily. Likewise, the court concluded that under the circumstances at the time of the statement Wolfe's subjective belief that a plea agreement was being negotiated, if indeed he held such a belief, was not reasonable given the absence of any objective indicia that such was the case. The court therefore held, citing Strickland v. Washington, 466 U.S. 668 (1984), that Wolfe had failed to show "a reasonable probability that, but for counsel's unprofessional er-

¹. The government does not argue that Wolfe has failed to exhaust his claim of ineffective assistance of counsel in the state courts.

rors, the result of the proceeding would have been different."
Id. at 694.

After reviewing the record, we can find no clear error in the district court's factual determination. See Castleberry v. Alford, 666 F.2d 1338, 1342 (10th Cir. 1982) (district court's findings of fact are not set aside unless clearly erroneous). Wolfe has presented no evidence of any threats or coercion, and offers no support for his belief that a plea agreement was being negotiated. Wolfe has therefore failed to demonstrate why the statement was even arguably inadmissible. Defense counsel's failure to properly object to the statement's admission was therefore inconsequential to the ultimate outcome of the proceeding. Strickland, 466 U.S. at 687 (no ineffective assistance of counsel where there is no breakdown in the adversarial process that renders the result unreliable).

The order of the district court denying the petition for writ of habeas corpus is affirmed; the mandate shall issue forthwith.

Entered for the Court

Stephen H. Anderson
Circuit Judge