

Harold Wayne NICHOLS, Petitioner,
v.
Ricky BELL, Warden, Riverbend Maximum Security Institution, Respondent.
No. 1:02 CV 330.
July 25, 2006.

(Here is the relevant section from the decision)

d. Coerced Statement (Claims 12.d and 12.e)

*28 Petitioner claims his trial counsel failed to properly debrief him about the circumstances surrounding his interrogation and subsequent confession. Thus, petitioner argues, trial counsel failed to obtain evidence that his statement was coerced. Respondent, questioning whether this claim is properly before the Court, asserts the claim is without merit because the investigation conducted by petitioner's trial counsel was objectively reasonable in light of petitioner's repeated confessions.

First, petitioner asserts that trial counsel failed to properly debrief him to find evidence of coercion. Petitioner argues there was evidence that the officers told him that, if he cooperated, he would receive treatment. Petitioner also claims that he was told if he requested counsel the officers would have to wake the judge and the judge would treat him more harshly. As explained below, these claims were addressed by the trial judge in petitioner's motion to suppress his statements during his criminal proceedings.

Second, petitioner contends the coercive nature of the interrogation process was demonstrated through the testimony Dr. Richard Ofshe and the victim's former boyfriend, Scott Simcox. Petitioner claims Mr. Simcox's testimony that Detective Heck showed him diagrams of the murder scene and familiarized him with the evidence demonstrates Detective Heck educated Mr. Simcox about the facts of the crime. Petitioner also claims Detective Heck used psychological coercion by showing Simcox the victim's picture and telling him the victim had been telling people how much she loved him. Detective Heck asked Mr. Simcox if his fingerprints would be in the victim's bedroom, and petitioner contends Detective Heck was suggesting that Simcox's fingerprints had been found. The alleged coercive nature of the interrogation of Scott Simcox does not demonstrate petitioner was coerced to confess in the instant case. Consequently, his argument that Scott Simcox was subjected to a coercive interrogation process, offers petitioner no relief in this habeas proceeding.

Dr. Richard Ofshe has a Ph.D. in sociology and is a professor at the University of California at Berkeley. Dr. Ofshe is a social psychologist who teaches, works, and researches in the field of coercive police interrogation techniques and the phenomenon of false or coerced confessions. Dr. Ofshe testified through his deposition at petitioner's state post-conviction hearing.

Dr. Ofshe testified experts in the field agree that false confessions exist, that individuals can be coerced into giving false confessions, and that there exist identifiable coercive police interrogation techniques which are likely to produce false confessions. Dr. Ofshe testified that more investigation is necessary to determine whether certain of those techniques were used in petitioner's case.

Petitioner's assertion that Dr. Ofshe found significant examples of coercion used in taking the petitioner's statement is simply incorrect. Rather, Dr. Ofshe testified he did not see any evidence that trial counsel thoroughly debriefed petitioner about the history of the interrogation. Dr. Ofshe did not testify that the interrogation methods used in this case demonstrate petitioner was coerced into confessing to the crime. Dr. Ofshe testified petitioner "volunteers certain things during the course of the suppression hearing, but the attorneys don't develop those points which makes me suspect that they never gave them adequate consideration" [Addendum No. 68, Addendum No. 9, Exhibit 79, p. 57]. This is mere speculation on Dr. Ofshe's part, and petitioner has not submitted any evidence demonstrating what information counsel failed to develop.

*29 Dr. Ofshe observed that petitioner testified during the suppression hearing that the officers indicated Nichols would receive treatment if he cooperated with them. It was Dr. Ofshe's opinion, that the officer's assurance of treatment should have caused trial counsel to very carefully debrief petitioner to determine how the subject of petitioner receiving help was broached during the interrogation. This is important, according to Dr. Ofshe, because a promise of a benefit, the treatment in this instance, for an admission of guilt would render the statement involuntary. Dr. Ofshe testified that the discussion of treatment could have been raised in such a way that would have been coercive but because of the "jumbled way" in which petitioner testified about that discussion Dr. Ofshe was unable to determine whether the treatment discussion was coercive [Court File No. 68, Addendum No. 9, Exhibit 79, p. 57-59].

In Dr. Ofshe's opinion, there appeared to have been no investigation of the circumstances surrounding the interrogation and the reliability of petitioner's statement confessing to the instant criminal episode. Dr. Ofshe's testimony referred generally to all of petitioner's cases. Dr. Ofshe stated that a detailed history of the interrogation process should have been investigated and a thorough evaluation of the physical evidence should have been conducted to determine whether the atmosphere of the interrogation and the physical evidence supported the confession. Dr. Ofshe found it astounding that there was no evidence linking petitioner to the crime. Dr. Ofshe concluded the lack of physical evidence linking petitioner to the crime, along with the physical evidence disconfirming petitioner as the perpetrator, should have signaled to his trial counsel there was a distinct possibility Nichols may be innocent. Dr. Ofshe did not identify any physical evidence in the case before this Court which "disconfirmed" petitioner's involvement in the instant crime [Court File No. 68, Addendum No. 9, Exhibit 79, at 62-66].

Dr. Ofshe said petitioner asked for counsel; and law enforcement's response, that they would have to wake the judge who would in turn treat petitioner more harshly, is a tactic to coerce a person not to press for his right to counsel. In petitioner's case, however, trial counsel filed an unsuccessful motion to suppress his statement on the basis that his statement was coerced. Trial counsel specifically argued that petitioner's confession was coerced on the basis that law enforcement ignored petitioner's invocation of his right to counsel and law enforcement promised to obtain treatment for petitioner [Court File No. 37, Addendum No. 5, Vol. 1, at 226-239, Brief in Support of Motion to Suppress]. However, the trial court specifically concluded that it did not believe Mr. Nichols' claim that he requested counsel.

The Court, first, does not believe Mr. Nichols. Mr. Nichols testimony is [sic] to the fact that he was not-or that he did ask for an attorney. The court finds that he did not make that. The Court thinks that the Court is a pretty good lie detector. And I did observe Mr. Nichols' manner and demeanor. I observed Mr. Dyer's manner and demeanor and I observed Mr. Holland's manner and demeanor as they were testifying. And Mr. Nichols was telling the truth on most things but Mr. Nichols was not telling the truth as to that particular point.

*30 ... And there's no indication or no evidence whatsoever that there was any intimidation, other than the statement by Mr. Nichols, which the Court does not believe. [Court File No. 39, Addendum No. 5, Vol. 10, pp. 151-53].

The trial judge credited the testimony of law enforcement over that of petitioner's, concluding the confession was not coerced and was admissible. The failed attempt by trial counsel to have petitioner's statement suppressed on the grounds of coercion and involuntariness demonstrate that counsel did investigate the circumstances surrounding petitioner's confession. Petitioner has failed to produce clear and convincing evidence that the trial court's credibility determinations and factual determination that his interrogation lacked coercion was unreasonable. Absent clear and convincing evidence that those determinations were unreasonable, the trial court's conclusion that the confession was admissible and not coerced must stand. Accordingly, this claim is without merit.

Even assuming counsel was deficient for failing to investigate the alleged coercive tactics more thoroughly, petitioner has not demonstrated he was prejudiced by counsel's alleged deficient actions. Petitioner has not demonstrated what evidence trial counsel would have discovered had they debriefed him more thoroughly regarding his confession. Therefore, petitioner is not entitled to habeas relief on this claim because not only has he not demonstrated counsel was deficient, petitioner has not demonstrated any prejudice as a result of counsel not debriefing him more thoroughly in the instant case. Thus, he has not demonstrated trial counsel rendered ineffective assistance during his criminal proceedings.

Petitioner's failure to demonstrate counsel's representation fell below an objective standard of reasonableness for failing to investigate the confession as coerced and his failure to demonstrate he was prejudiced by counsel's alleged deficient performance results in the dismissal of this claim. The state court's determination that petitioner did not establish ineffective assistance of counsel was not an unreasonable application of clearly established federal law or an unreasonable determination of the facts. Accordingly, this claim will be DISMISSED.