



Alerts

Wisconsin Supreme Court Finds No Exceptions to Actual Innocence Rule

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Skindzelewski v. Smith, 2020 WI 57 (June 18, 2020)

Brief Summary

A Wisconsin plaintiff's legal malpractice action against his former criminal defense attorney was shot down by the Wisconsin Supreme Court because he could not prove his innocence, as required by the "actual innocence rule." The plaintiff claimed his lawyer was negligent for not raising a statute of limitations defense, which would have barred the criminal charges against him entirely—despite his culpability. However, since he could not prove his innocence—and because the Court found there was no exception to the Rule under these circumstances—he could not proceed with his legal malpractice action.

Complete Summary

The "actual innocence rule" (Rule) generally requires a criminal defendant to establish his or her innocence in order to prevail in a legal malpractice action against their former defense attorney in connection to the underlying criminal case. The Rule is premised on the idea that "attorney error does not negate a guilty defendant's culpability." Recently, the Wisconsin Supreme Court strictly enforced the Rule, finding there were no exceptions for a particular plaintiff.

Here, the plaintiff sued his former criminal defense attorney for legal malpractice because the attorney failed to raise the statute of limitations as an affirmative defense in his criminal case. The statute of limitations would have barred the charges. Plaintiff pled guilty, served half of the sentence in the county jail, and eventually had the conviction vacated on appeal.

Later, plaintiff sued his lawyer and argued he should not have to prove his actual innocence because his counsel's alleged negligence resulted in a conviction that was "unauthorized by law." Plaintiff relied on several cases from other jurisdictions where courts found limited exceptions to the Rule. In two of those cases, however, the criminal defendant suing for legal malpractice was not challenging the conviction itself; they were challenging the lawyer's failure to argue against the imposition of sentences beyond statutory maximums. Similarly, in the third case, the criminal defendant sued his former lawyer for withdrawing a plea deal—without his consent—that would have given him a

Attorneys

Terrence P. McAvoy

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suspended sentence. The Court found that none of these cases were analogous to plaintiff's case, because plaintiff was challenging his very conviction.

Accordingly, the Court held that there was no exception to the Rule, and the plaintiff was required to prove his innocence. Because he could not, his legal malpractice case was barred. The Court concluded: "[n]othing about [plaintiff's] case warrants developing an exception to the actual innocence rule; recognizing one under these circumstances would reward criminality."

Significance of Opinion

In Wisconsin, there are no exceptions to the "actual innocence rule" where the plaintiff in a legal malpractice action challenges the conviction itself.