

JONATHAN M. CAREY

v.

STATE OF MAINE

Argued May 3, 2016
Decided October 18, 2016

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HJELM, JJ.

MEMORANDUM OF DECISION

The State of Maine appeals from an order of the Superior Court (Kennebec County, *Mills, J.*) granting Jonathan M. Carey’s request for post-conviction review (PCR) and, pursuant to 15 M.R.S. § 2130 (2015), vacating his judgment of conviction for unlawful sexual contact (Class B), 17-A M.R.S. § 255-A (2015), and unlawful sexual touching (Class C), 17-A M.R.S. § 260 (2015). The post-conviction court found that Carey had received ineffective assistance of counsel.

In an appeal of a post-conviction review order, we “apply a deferential standard of review to the findings of a post-conviction court,” *Francis v. State*, 2007 ME 148, ¶ 5, 938 A.2d 10, and we review questions of law de novo, *Roberts v. State*, 2014 ME 125, ¶ 21, 103 A.3d 1031.

“To prevail in a post-conviction proceeding based on an alleged constitutional deprivation of counsel, the petitioner must demonstrate two points: first, that counsel’s representation fell below an objective standard of reasonableness, and second, that errors of counsel . . . actually had an adverse

effect on the defense.” *Theriac v. State*, 2015 ME 137, ¶ 14, 125 A.3d 1163 (quotation marks omitted). These two elements constitute a “showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

A determination that a defendant received ineffective assistance of counsel is a factual finding made on a case-by-case basis, and a finding that a petitioner received ineffective assistance will only be overturned if it is clearly erroneous. *Aldus v. State*, 2000 ME 47, ¶ 19, 748 A.2d 463. We will not disturb a post-conviction court’s finding of ineffective assistance of counsel unless “there is no competent evidence in the record to support it.” *Francis*, 2007 ME 148, ¶ 5, 938 A.2d 10.

Because there is competent evidence on the record supporting the post-conviction court’s findings, and because we defer to these findings, we conclude that the post-conviction court did not commit clear error in granting Carey’s petition for post-conviction review.

The entry is:

Judgment affirmed.

On the briefs:

Maeghan Maloney, District Attorney, and Paul Cavanaugh II,
Dep. Dist. Atty., Prosecutorial District IV, Augusta, for
appellant State of Maine

Robert E. Sandy, Jr., Esq., Sherman & Sandy, Waterville, for
appellee Jonathan M. Carey

At oral argument:

Paul Cavanaugh II, Dep. Dist. Atty., for appellant State of
Maine

Robert E. Sandy, Jr., Esq., for appellee Jonathan M. Carey

Kennebec County Superior Court docket number CR-2014-318
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