

WISCONSIN SUPREME COURT
TUESDAY, DECEMBER 9, 2014
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge Richard J. Sankovitz, presiding.

2013AP467-CR

State v. Anthony

A decision by the Supreme Court in this case is expected to provide guidance on when a trial court may deny a defendant the right to testify and the standard by which the Court of Appeals should review that determination.

Some background: Eddie Lee Anthony was convicted of first-degree intentional homicide for killing Sabrina Junior, his live-in girlfriend and the mother of his children, with an ice pick on Aug. 20, 2010.

At trial, the state presented evidence that Anthony and Junior had been walking through their neighborhood and began arguing. The couple returned to their home, where the argument continued. Their eldest daughter entered the apartment later to find Junior's body as Anthony was leaving. Anthony fled and was arrested in Illinois. Anthony did not contest these allegations but intended to testify and argue self-defense. The court engaged in a discussion with Anthony that ended with the court ruling that Anthony could not testify.

The court explained to Anthony that if he were asked if he had ever been convicted of a crime, he should respond that he had been convicted of two crimes. This discussion reflected a pretrial ruling. Anthony had served 12 years for a third conviction from 1966, later deemed wrongful. Anthony maintained that he had been convicted three times and intended to say so.

The court told Anthony that he would only be able to say that he had been convicted twice; he was not allowed to mention this third conviction. Anthony stated he understood, but insisted that the jury should "know the truth, the whole truth." The court did not want Anthony to mention the wrongful conviction and felt that Anthony's demeanor indicated he might be disruptive. The court ordered that Anthony would not be allowed to testify in his own defense.

When trial counsel suggested that Anthony be permitted to testify and the state could argue and the court could instruct as necessary as to any irrelevant information that might be disclosed, the court refused, explaining, "That's putting the inmates in charge of the asylum; so I'm sorry, I'm not going to go that route."

Trial counsel said Anthony would have testified that he acted in self-defense when he killed Junior, whom Anthony claimed had a history of being aggressive while high on crack cocaine and that she was exhibiting severe aggression in connection on the night of her death. Anthony would have explained why fleeing was not indicative of guilt, because he has a special fear of police in Illinois and Wisconsin due to events in his past, including the wrongful conviction from 1966, so flight was a natural response.

During closing arguments, the state repeatedly referenced the fact that Anthony fled the scene in order to prove that Anthony intended to kill Junior. After being convicted, Anthony timely filed a motion for post-conviction relief arguing ineffective assistance of counsel for, in relevant part, trial counsel's failure to effectively argue that Anthony had a right to testify in his own defense or advocate for him in the exchange that led to the denial of his right to testify.

The circuit court denied Anthony's motion without hearing. Anthony appealed, arguing that the circuit court erred when it denied Anthony his right to testify in his own defense, claiming this obliterated Anthony's only defense and that there is nothing on record to indicate that Anthony either was truly disruptive or did not intend to tell the truth.

The Court of Appeals affirmed, citing Illinois v. Allen, 397 U.S. 337 (1970), which holds that the circuit court had the authority to strip Anthony of the right to testify and that "even if the trial court should have permitted Anthony to testify, the refusal to do so was harmless."

The state contends there was such overwhelming evidence of the defendant's guilt that any error was clearly harmless.

Anthony argues that by "preemptively stripping Anthony of his right to testify, the court stripped Anthony of his only defense, a far too severe punishment for Anthony's minor disruption and dissent." Anthony argues that the court "should have minimally allowed Anthony the opportunity to testify to see if he would disobey the court's order not to explain why he fled from police."