

SUPREME COURT OF OREGON

State v. Partain, 349 Or. 10

239 P.3d 232 (2010) · No. SC S057581; CA A132336; CC 03P3038 · Decided September 10, 2010

SUMMARY

The Oregon Supreme Court held that the no-harsher-sentence rule announced in *State v. Turner* was no longer viable and overruled it. The court concluded that a longer sentence after remand is not categorically prohibited, but vindictive sentencing remains unlawful under the Due Process Clause. It affirmed the Court of Appeals' remand for further development of the record concerning the reasons for the increased sentence.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.; Walters, J.
JURISDICTION	Oregon
DECIDED	September 10, 2010
DOCKET	SC S057581; CA A132336; CC 03P3038
DISPOSITION	vacated
PROCEDURAL POSTURE	The State petitioned for review of a Court of Appeals decision reversing a 600-month sentence imposed on remand after the defendant successfully challenged sentencing errors in his original judgment.
STANDARD OF REVIEW	The Supreme Court reviewed the legal validity of the sentencing rule de novo and reviewed the sentencing record to determine whether the increased sentence was adequately justified and free from vindictiveness.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court en banc opinion
PARTIES	State of Oregon v. Richard Dale Partain

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- due process
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Oregon's no-harsher-sentence rule from *State v. Turner* barred a longer sentence after a successful appeal and remand for resentencing.
2. Whether subsequent Oregon legislation had undermined the legal premise of *Turner* sufficiently to warrant overruling it.
3. What constitutional standard governs a harsher sentence imposed after a successful appeal or remand.
4. Whether the record adequately demonstrated that the 600-month sentence was based on nonvindictive reasons.

HOLDINGS

1. *State v. Turner* is overruled. Oregon law does not categorically prohibit a trial court from imposing a harsher sentence after retrial or resentencing following a successful appeal.
2. A trial court may impose a harsher sentence after retrial or remand if the sentence is not imposed to punish the defendant for pursuing an appeal.
3. If an Oregon trial judge imposes a more severe sentence on resentencing, the reasons must affirmatively appear on the record, must be based on identified facts of which the first sentencing judge was unaware, and must satisfy a reviewing court that the sentence is not vindictive. Without adequate facts and reasons, the increased sentence is presumed vindictive and must be reversed.

KEY QUOTATIONS

“Turner is overruled.” (349 Or. at 23)

“If an Oregon trial judge believes that an offender whom the judge is about to resentence should receive a more severe sentence than the one originally imposed, the judge's reasons must affirmatively appear on the record.” (349 Or. at 25-26)

FACTUAL BACKGROUND

In 2003, Partain was convicted of twelve sex crimes and received consecutive and concurrent sentences totaling 420 months. Four sentences were challenged because the trial court had denied sentence-reduction-program eligibility without making findings required by ORS 137.750. After remand for resentencing, the trial court discharged those four sentences but restructured the remaining sentences to produce a 600-month aggregate term, without adding new evidence or explaining the increase.

PROCEDURAL HISTORY

Partain was convicted of twelve sex crimes and originally received an aggregate 420-month prison sentence. After the State conceded an error concerning sentence-reduction-program eligibility, the Court of Appeals remanded the case for resentencing. On remand, the trial court imposed an aggregate 600-month sentence without stating reasons for the increase. The Court of Appeals reversed under *State v. Turner*. The Oregon

Supreme Court allowed review, overruled *Turner*, affirmed the Court of Appeals' remand result on different grounds, vacated the circuit court judgment, and remanded for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the circuit court for resentencing. The court may impose a sentence no greater than the original 420-month total without stating reasons. If it imposes a longer or otherwise more severe sentence, it must place on the record one or more nonvindictive reasons supported by identified facts of which the first sentencing judge was unaware.

CASES CITED

- *State v. Turner*, 247 Or. 301, 429 P.2d 565 (1967)
- *State v. Partain*, 228 Or. App. 329, 208 P.3d 526 (2009)
- *State v. Stockman*, 43 Or. App. 235, 603 P.2d 363 (1979)
- *G.L. v. Kaiser Foundation Hospitals, Inc.*, 306 Or. 54, 757 P.2d 1347 (1988)
- *State ex rel Dillavou v. Foster*, 273 Or. 319, 541 P.2d 811 (1975)
- *State v. Holmes*, 287 Or. 613, 601 P.2d 1213 (1979)
- *State v. Martin*, 288 Or. 643, 607 P.2d 171 (1980)
- *State v. Smith*, 128 Or. 515, 273 P. 323 (1929)
- *State v. Montgomery*, 237 Or. 593, 392 P.2d 642 (1964)
- *State v. Smith*, 116 Or. App. 558, 842 P.2d 805 (1992), adhered to on reconsideration, 120 Or. App. 438, 852 P.2d 934 (1993)
- *State v. Linthwaite*, 295 Or. 162, 665 P.2d 863 (1983)
- *State v. Welch*, 264 Or. 388, 505 P.2d 910 (1973)
- *Bailey v. Lampert*, 342 Or. 321, 153 P.3d 95 (2007)
- *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)
- *Texas v. McCullough*, 475 U.S. 134, 106 S. Ct. 976, 89 L. Ed. 2d 104 (1986)