

SUPREME COURT OF COLORADO

Allman v. People

Allman, 2019 CO 78 (Colo. 2019) · No. 17SC659 · Decided September 23, 2019

SUMMARY

The Colorado Supreme Court held that identity theft under section 18-5-902(1)(a), C.R.S., is not a continuing offense, permitting separate sentencing for multiple identity-theft convictions. The court also held that the identity-theft and forgery convictions were not supported by identical evidence and therefore did not require concurrent sentences. However, it held that a court may not impose imprisonment for some offenses and probation for others in the same case, and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Boatright
JURISDICTION	Colorado
DECIDED	September 23, 2019
DOCKET	17SC659
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Allman sought review of the Colorado Court of Appeals' affirmance of his convictions and sentences. The Colorado Supreme Court granted certiorari to decide whether identity theft is a continuing offense, whether certain sentences had to be concurrent, and whether a court may impose imprisonment for some counts and probation for others in the same case.
STANDARD OF REVIEW	Statutory interpretation and whether the trial court had authority to impose a particular sentence are reviewed de novo. Sentencing decisions concerning separate or concurrent sentences are reviewed for abuse of discretion, subject to statutory requirements.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Frederick Leroy Allman v. The People of the State of Colorado

TOPICS

sentencing

double jeopardy

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statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether identity theft by use under section 18-5-902(1)(a), C.R.S. (2019), is a continuing offense requiring multiple convictions to merge for sentencing.
2. Whether Allman's identity theft and forgery convictions were supported by identical evidence requiring concurrent sentences under section 18-1-408(2)-(3), C.R.S. (2019).
3. Whether a court may impose imprisonment for some offenses and probation for others when sentencing a defendant for multiple offenses in the same case.

HOLDINGS

1. Identity theft by use under section 18-5-902(1)(a), C.R.S. (2019), is not a continuing offense. Each act of putting another person's identifying information into service to obtain value or make a financial payment is a separate, discrete offense.
2. Concurrent sentences were not required for Allman's identity theft and forgery convictions because the convictions were based on separate acts and evidence that was not identical.
3. When sentencing a defendant for multiple offenses in the same case, a court may not impose imprisonment for some offenses and probation for others.

KEY QUOTATIONS

“Accordingly, we hold that identity theft by use under section 18-5-902(1)(a) is not a continuing offense.” (¶ 20)

“Because the probation statute does not grant the courts the power to impose sentences to both imprisonment and probation in a multi-count case, we hold that when a court sentences a defendant for multiple offenses in the same case, it may not impose imprisonment for some offenses and probation for others.” (¶ 28)

FACTUAL BACKGROUND

Allman lived with L.S., a seventy-five-year-old man, while L.S. was away on vacation. During that period, Allman repeatedly transferred funds from L.S.'s bank account, used L.S.'s identifying information to open multiple credit cards and lines of credit, and attempted to open another account. He made more than \$45,000 in purchases, took L.S.'s car, and used a Citibank card at a liquor store and Target while signing L.S.'s name on receipts.

PROCEDURAL HISTORY

A jury convicted Allman of seven counts of identity theft, two counts of forgery, attempted identity theft, aggravated motor vehicle theft, and theft from an at-risk elder. The trial court imposed a total of fifteen years in

the Department of Corrections, followed by mandatory parole, and imposed ten years of consecutive probation on one forgery count. The Colorado Court of Appeals affirmed the judgment and sentence. The Colorado Supreme Court affirmed in part, reversed in part, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Return the case to the trial court for resentencing consistent with the opinion, including removal of the unauthorized combination of imprisonment for some counts and probation for another count.

CASES CITED

- People v. Perez, 2016 CO 12, ¶ 8, 367 P.3d 695, 697
- People v. Williams, 651 P.2d 899, 902 (Colo. 1982)
- Brown v. Ohio, 432 U.S. 161, 165-66 (1977)
- People v. Thoro Prods. Co., 70 P.3d 1188, 1192 (Colo. 2003)
- Woellhaf v. People, 105 P.3d 209, 214-15 (Colo. 2005)
- Toussie v. United States, 397 U.S. 112, 115 (1970)
- People v. Forgey, 770 P.2d 781, 783 (Colo. 1989)
- People v. Allman, 2017 COA 108, ¶ 17
- Whitaker v. People, 48 P.3d 555, 558 (Colo. 2002)
- Juhl v. People, 172 P.3d 896, 899, 902 (Colo. 2007)
- Misenhelter v. People, 234 P.3d 657, 660 (Colo. 2010)
- Hunsaker v. People, 2015 CO 46, ¶ 11, 351 P.3d 388, 391
- Vensor v. People, 151 P.3d 1274, 1275 (Colo. 2007)
- In re Estate of Royal, 826 P.2d 1236, 1238 (Colo. 1992)
- LaFond v. Sweeney, 2015 CO 3, ¶ 12, 343 P.3d 939, 943