

SUPREME COURT OF NORTH CAROLINA

State of North Carolina v. Marlon Rio Massey, 361 N.C. 406

646 S.E.2d 362 (2007) · No. No. 637A05 · Decided June 28, 2007

SUMMARY

The Supreme Court of North Carolina held that the defendant's convictions did not violate the state constitutional requirement of a unanimous jury verdict. The court also held that any Blakely sentencing error concerning the aggravating factor of abusing a position of trust was harmless beyond a reasonable doubt. The court reversed the Court of Appeals in part and reinstated the challenged convictions and sentences.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Newby, Justice
JURISDICTION	North Carolina
DECIDED	June 28, 2007
DOCKET	No. 637A05
DISPOSITION	reversed
PROCEDURAL POSTURE	The State appealed as of right from the Court of Appeals' decision reversing twelve convictions and granting a new trial, and sought discretionary review of the Court of Appeals' order granting a new sentencing hearing on remaining convictions.
STANDARD OF REVIEW	Constitutional issues are reviewed de novo. The Court applied federal harmless-error analysis to the assumed Blakely sentencing error and required proof beyond a reasonable doubt that the error did not affect the result.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of North Carolina v. Marlon Rio Massey

TOPICS

- criminal procedure
- sentencing
- sixth amendment
- harmless error
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendant's convictions violated the North Carolina Constitution's requirement that criminal convictions be based on a unanimous jury verdict when the evidence showed more incidents of misconduct than the number of charged offenses and the verdicts did not identify specific incidents.
2. Whether the absence of a jury finding beyond a reasonable doubt on the aggravating factor that defendant abused a position of trust or confidence required a new sentencing hearing under *Blakely v. Washington*, or whether any error was harmless beyond a reasonable doubt.

HOLDINGS

1. No jury-unanimity violation occurred merely because different jurors might have relied on different incidents of misconduct when the jury as a whole found that the prohibited sexual conduct occurred. The Court of Appeals therefore erred in reversing the eight felonious-sexual-act convictions and four indecent-liberties convictions.
2. Assuming without deciding that the trial court committed *Blakely* error by imposing aggravated-range sentences without a jury finding on the position-of-trust aggravating factor, the error was harmless beyond a reasonable doubt and did not require a new sentencing hearing.

KEY QUOTATIONS

"although the evidence showed a greater number of incidents committed by the defendant than the number of offenses with which he was charged and convicted, no jury unanimity problem existed regarding the convictions because, "while one juror might have found some incidents of misconduct and another juror might have found different incidents of misconduct, the jury as a whole found that improper sexual conduct occurred."" (646 S.E.2d at 364)

"Assuming, without deciding, Blakely error in the present case, we find such error to be harmless beyond a reasonable doubt." (646 S.E.2d at 364-65)

"Taken together, the evidence against defendant in each instance is so overwhelming and uncontroverted that any rational fact-finder would have found beyond a reasonable doubt the aggravating factor that defendant took advantage of a position of trust or confidence to commit the offense." (646 S.E.2d at 365)

FACTUAL BACKGROUND

Defendant sexually abused H.J., the six-year-old daughter of a girlfriend in whose home defendant lived. H.J.'s biological parents agreed that defendant would be treated as her stepfather and adult parental figure, and defendant regularly cared for H.J. and her half-siblings while H.J.'s mother worked. A jury convicted defendant of multiple sexual offenses, including offenses involving a minor over whom he had assumed a parental role, and the trial court enhanced each sentence based on abuse of a position of trust or confidence.

PROCEDURAL HISTORY

A jury convicted defendant of multiple sexual offenses and indecent liberties, and the trial court imposed five consecutive aggravated-range sentences based on the aggravating factor that defendant abused a position of trust or confidence. The Court of Appeals reversed eight felonious-sexual-act convictions and four indecent-liberties convictions because it could not determine whether the jury unanimously agreed on specific acts, and ordered a new sentencing hearing because a jury had not found the aggravating factor beyond a reasonable doubt. The Supreme Court of North Carolina reversed those portions of the Court of Appeals' decision, while leaving other issues undisturbed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Court reinstated the eight felonious-sexual-act convictions and four indecent-liberties convictions and reversed the order granting a new sentencing hearing on the remaining convictions. Other issues addressed by the Court of Appeals were left undisturbed.

CASES CITED

- State v. Massey, 174 N.C. App. 216, 621 S.E.2d 633 (2005)
- State v. Massey, 361 N.C. 175, 640 S.E.2d 390 (2006)
- State v. Markeith Lawrence, 170 N.C. App. 200, 612 S.E.2d 678 (2005)
- State v. Gary Lawrence, 165 N.C. App. 548, 599 S.E.2d 87 (2004)
- State v. Markeith Lawrence, 360 N.C. 368, 627 S.E.2d 609 (2006)
- State v. Gary Lawrence, 360 N.C. 393, 627 S.E.2d 615 (2006)
- Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006)
- State v. Blackwell, 361 N.C. 41, 638 S.E.2d 452 (2006), cert. denied, 127 S. Ct. 2281 (2007)
- State v. Tucker, 357 N.C. 633, 588 S.E.2d 853 (2003)