

SUPREME COURT OF FLORIDA

New v. State

807 So. 2d 52 (Fla. 2001) · No. SC00-1240 · Decided December 6, 2001

SUMMARY

The Florida Supreme Court held that its decision in *State v. Hudson*, which clarified that habitual violent felony offender sentencing and mandatory minimum terms were discretionary, did not apply retroactively under the Witt standard. The court therefore approved the First District Court of Appeal's denial of Paul New's postconviction motion as untimely. Two justices dissented, concluding that fundamental fairness and due process required retroactive application of *Hudson*.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Wells, C.J.; Shaw, J.; Harding, J.; Lewis, J.; Quince, J.; Anstead, J.; Pariente, J.
JURISDICTION	Florida
DECIDED	December 6, 2001
DOCKET	SC00-1240
DISPOSITION	approved
PROCEDURAL POSTURE	New sought review of a First District Court of Appeal decision affirming the denial of his Florida Rule of Criminal Procedure 3.850 motion as untimely. The First District certified conflict regarding whether <i>State v. Hudson</i> applied retroactively.
STANDARD OF REVIEW	De novo review of the legal question whether a change in decisional law applies retroactively in post-conviction proceedings.
PRECEDENTIAL VALUE	Published Florida Supreme Court decision; majority opinion approving the First District's decision and resolving certified conflict.
PARTIES	Paul Wayne New v. State of Florida

TOPICS

- post-conviction relief
- criminal procedure
- sentencing
- statutory interpretation
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether *State v. Hudson* applied retroactively to permit New to challenge his habitual violent felony sentence in a Rule 3.850 post-conviction motion.
2. Whether Hudson constituted a constitutional decision and a development of fundamental significance under *Witt v. State* such that it could overcome the applicable time bar.

HOLDINGS

1. *State v. Hudson* does not apply retroactively to New's sentence because it was not constitutional in nature and did not represent a development of fundamental significance under the *Witt* retroactivity test.

KEY QUOTATIONS

“Applying the teachings of Witt, we conclude that Hudson is not constitutional in nature and does not represent a development of fundamental significance but is merely an evolutionary refinement which makes clear that under section 775.084 a trial court has discretion in whether or not to impose a mandatory minimum sentence.” (807 So. 2d at 53)

FACTUAL BACKGROUND

New pleaded guilty to three counts of robbery. On November 1, 1994, the trial court sentenced him as a habitual violent felony offender to concurrent fifteen-year terms of incarceration, including a ten-year mandatory minimum under section 775.084(4)(b). After *State v. Hudson* clarified that the sentencing court had discretion whether to impose a mandatory minimum, New sought post-conviction relief alleging that the trial court had failed to recognize and exercise that discretion.

PROCEDURAL HISTORY

New pleaded guilty to three robbery counts and was sentenced as a habitual violent felony offender. After *State v. Hudson* held that habitual-offender sentencing and the imposition of a mandatory minimum were discretionary, New filed a Rule 3.850 post-conviction motion alleging that the sentencing court failed to exercise that discretion. The trial court denied the motion as untimely, and the First District affirmed while certifying conflict between decisions concerning Hudson's retroactivity. The Florida Supreme Court approved the First District's decision.

DISPOSITION

approved

CASES CITED

- *New v. State*, 765 So. 2d 93 (Fla. 1st DCA 2000)
- *Crawford v. State*, 735 So. 2d 514 (Fla. 3d DCA 1999)

- Anthony v. State, 762 So. 2d 528 (Fla. 2d DCA 2000)
- State v. Hudson, 698 So. 2d 831, 832-33 (Fla. 1997)
- Witt v. State, 387 So. 2d 922, 931 (Fla. 1980)
- Newell v. State, 714 So. 2d 434, 435 (Fla. 1998)
- Moody v. State, 699 So. 2d 1009 (Fla. 1997)
- Fiore v. White, 531 U.S. 225, 121 S. Ct. 712, 148 L. Ed. 2d 629 (2001)
- State v. Callaway, 658 So. 2d 983, 986-87 (Fla. 1995)
- Dixon v. State, 730 So. 2d 265, 267 (Fla. 1999)
- State v. Stevens, 714 So. 2d 347, 349-51 (Fla. 1998) (Harding, J., concurring)
- Walsingham v. State, 602 So. 2d 1297, 1297 (Fla. 1992)
- Burdick v. State, 594 So. 2d 267, 271 (Fla. 1992)
- Callaway v. State, 642 So. 2d 636, 641 (Fla. 2d DCA 1994)
- Hale v. State, 630 So. 2d 521 (Fla. 1993)

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