

SUPREME COURT OF NEW JERSEY

State v. Feaster, 184 N.J. 235

877 A.2d 229 (2005) · Decided July 14, 2005

SUMMARY

The Supreme Court of New Jersey held that the prosecutor substantially interfered with a key witness's decision to testify at the defendant's post-conviction relief hearing by implying that the witness could face perjury charges if he recanted his trial testimony. The Court concluded that this interference violated the defendant's state constitutional due process and compulsory process rights. The Court also explained that testimony given on direct examination should not be considered when the witness invokes the Fifth Amendment to avoid cross-examination.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Albin; Chief Justice Poritz; Justice Long; Justice LaVecchia; Justice Zazzali; Justice Wallace; Justice Rivera-Soto
JURISDICTION	New Jersey
DECIDED	July 14, 2005
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant appealed as of right from the denial of his petition for post-conviction relief and request for a new trial after a capital-murder conviction and death sentence had been affirmed on direct appeal and on proportionality review.
STANDARD OF REVIEW	The court reviewed the PCR court's legal conclusions de novo and deferred to factual findings supported by adequate, substantial, and credible evidence. The court independently assessed whether prosecutorial interference violated defendant's constitutional rights and whether the error was harmless.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Jersey
PARTIES	Richard Feaster, now known as Sean Padraic Kenney v. State of New Jersey

TOPICS

- state post-conviction relief
- prosecutorial misconduct
- due process
- sixth amendment
- criminal procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether the prosecutor substantially interfered with a defense witness's decision to testify by indicating that the witness would face penal consequences if he testified consistently with his recantation.
2. Whether that interference violated defendant's state constitutional due process and compulsory-process rights.
3. What remedy was required when prosecutorial interference made a critical defense witness unavailable at a PCR hearing.
4. Whether the PCR court could consider testimony given by a witness who invoked the Fifth Amendment to prevent cross-examination.

HOLDINGS

1. The prosecutor's statement that there would be 'considerations' if Sadlowski testified consistently with his recantation substantially interfered with his decision to testify for defendant, even though the statement was conversational, indirect, and made in good faith.
2. The prosecutor's interference violated defendant's rights to due process and compulsory process under the New Jersey Constitution, and the violation was not harmless.
3. When a witness gives direct testimony concerning a matter at the heart of a defendant's case and then invokes the privilege against self-incrimination to prevent cross-examination, the court should strike the testimony.
4. The case must be remanded for a PCR hearing at which the State may grant Sadlowski testimonial use immunity. If the State declines to do so and Sadlowski continues to invoke the privilege, the PCR court must disregard Sadlowski's trial testimony and determine whether its absence would probably create reasonable doubt requiring a new trial.

KEY QUOTATIONS

"We hold that the State may not use threats or intimidating tactics that substantially interfere with a witness's decision to testify for a defendant." (at 245)

"The State can prosecute those who commit perjury or false swearing; the State simply cannot threaten a defense witness to keep him off the stand." (at 245)

"We, therefore, hold that the prosecutor substantially interfered with Sadlowski's decision to testify in this capital case, thereby violating defendant's state constitutional due process and compulsory process rights." (at 238)

FACTUAL BACKGROUND

Defendant was convicted of murdering a gas-station attendant with a close-range shotgun blast; the State's case relied substantially on defendant's alleged post-murder admissions and testimony from Michael Sadlowski. Years after trial, Sadlowski signed a certified statement asserting that his trial testimony was false and had resulted from prosecutorial promises and threats. At the PCR hearing, after the prosecutor told Sadlowski's attorney that there would be 'considerations' if Sadlowski testified consistently with the recantation, Sadlowski withdrew the statement and invoked his Fifth Amendment privilege. Because the withdrawal prevented defendant from examining the recantation and its circumstances, the PCR court did not consider the statement.

PROCEDURAL HISTORY

A Gloucester County jury convicted defendant of capital murder and related offenses and sentenced him to death. The Supreme Court of New Jersey affirmed the convictions and sentences on direct appeal and later upheld the death sentence on proportionality review. Defendant filed a PCR petition raising numerous claims, including ineffective assistance of counsel and newly discovered evidence based on Michael Sadlowski's recantation of trial testimony. The PCR court denied relief after refusing to consider the recantation because Sadlowski withdrew it and invoked the Fifth Amendment following a prosecutor's warning that there would be 'considerations' if he testified consistently with the recantation. The Supreme Court remanded for a further PCR hearing.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand to the PCR court for a hearing consistent with the opinion. The State may grant Sadlowski testimonial use immunity. If Sadlowski remains unavailable because he invokes the Fifth Amendment, the PCR court must disregard his trial testimony and determine whether its absence would have the probable effect of raising a reasonable doubt as to defendant's guilt. If immunity is granted, the court must consider Sadlowski's testimony, any rebuttal evidence, and whether defendant satisfies the newly discovered evidence standard. The Supreme Court retained jurisdiction.

CASES CITED

- State v. Feaster, 156 N.J. 1, 716 A.2d 395 (1998)
- State v. Feaster, 165 N.J. 388, 757 A.2d 266 (2000)
- State v. Rue, 175 N.J. 1, 18, 811 A.2d 425 (2002)
- State v. Martini, 144 N.J. 603, 617, 677 A.2d 1106 (1996)
- State v. Ramseur, 106 N.J. 123, 326, 524 A.2d 188 (1987)
- State v. Fort, 101 N.J. 123, 130-31, 501 A.2d 140 (1985)
- State v. Jamison, 64 N.J. 363, 374-77, 316 A.2d 439 (1974)
- Washington v. Texas, 388 U.S. 14, 19 (1967)
- United States v. Hammond, 598 F.2d 1008, 1012-13 (5th Cir. 1979)

- United States v. Morrison, 535 F.2d 223, 224-29 (3d Cir. 1976)
- People v. Shapiro, 50 N.Y.2d 747, 431 N.Y.S.2d 422, 409 N.E.2d 897, 903-06 (1980)
- State v. Branch, 182 N.J. 338, 348, 865 A.2d 673 (2005)
- State v. Ways, 180 N.J. 171, 187-89, 850 A.2d 440 (2004)
- State v. Carter, 69 N.J. 420, 426-27, 354 A.2d 627 (1976)
- State v. Puchalski, 45 N.J. 97, 99-100, 211 A.2d 370 (1965)
- State v. Carminati, 170 N.J. Super. 1, 14, 405 A.2d 456 (App. Div. 1979)
- United States v. Lord, 711 F.2d 887, 891-92 (9th Cir. 1983)