

SUPREME COURT OF OHIO

State ex rel. O'Malley v. Collier-Williams, Judge

2018-Ohio-3154 (Ohio 2018) · No. 2017-0346 · Decided August 9, 2018

SUMMARY

The Supreme Court of Ohio granted a writ of prohibition preventing a common pleas court judge from empaneling a jury for a capital resentencing hearing after the defendant had validly waived a jury trial. The court held that the judge patently and unambiguously lacked jurisdiction under Ohio law and denied the request for mandamus as moot.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, Chief Justice; Terrence O'Donnell, Justice; Judith L. French, Justice; Patrick F. Fischer, Justice; Mary DeGenaro, Justice; Maureen E. Kennedy, Justice; Patrick DeWine, Justice
JURISDICTION	Ohio
DECIDED	August 9, 2018
DOCKET	2017-0346
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original action seeking writs of prohibition and mandamus to prevent a common-pleas judge from empaneling a jury for a capital-murder resentencing hearing after the defendant had waived a jury for trial.
STANDARD OF REVIEW	A writ of prohibition requires proof that the respondent is exercising or is about to exercise judicial power, that the exercise is unauthorized by law, and that denying the writ would cause injury for which there is no adequate remedy in the ordinary course of law. The adequate-remedy requirement does not apply when the court patently and unambiguously lacks jurisdiction.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The State ex rel. Michael C. O'Malley, Cuyahoga County Prosecuting Attorney v. Cassandra Collier-Williams, Judge, Kelly Foust, intervening respondent

TOPICS

criminal procedure

sentencing

writ of certiorari

appellate procedure

statutory interpretation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial judge patently and unambiguously lacked jurisdiction to invalidate Foust’s prior jury waiver and empanel a jury for his capital resentencing hearing.
2. Whether the availability of a discretionary appeal under R.C. 2945.67(A) barred the State from obtaining a writ of prohibition.
3. Whether the State’s request for a writ of mandamus remained viable after issuance of the writ of prohibition.

HOLDINGS

1. A discretionary appeal constitutes an adequate remedy in the ordinary course of law, and prohibition cannot be used as a substitute for that appeal. The availability of that remedy was sufficient even though the State might not prevail on appeal.
2. The trial judge patently and unambiguously lacked jurisdiction to invalidate Foust’s prior jury waiver and empanel a jury for his capital resentencing hearing. Under R.C. 2929.06(B), when the original trial was conducted by a three-judge panel, that panel or a new three-judge panel must conduct the resentencing hearing.
3. The request for a writ of mandamus was moot because issuance of the writ of prohibition resolved the requested relief.

KEY QUOTATIONS

“We hold that Judge Collier-Williams patently and unambiguously lacks jurisdiction to empanel a jury for a resentencing hearing in a capital-murder case when the defendant has validly waived a jury trial.” (¶ 1)

“We have “ ‘consistently interpreted’ the word ‘shall’ in a legislative enactment ‘to make mandatory the provision in which it is contained, absent a clear and unequivocal intent that it receive a construction other than its ordinary meaning.’ ” ” (¶ 18)

“Accordingly, because O’Malley has established that Judge Collier-Williams patently and unambiguously lacked jurisdiction to invalidate Foust’s previous jury waiver and empanel a jury for his resentencing hearing, we grant the requested writ of prohibition.” (¶ 25)

FACTUAL BACKGROUND

Foust was indicted for aggravated murder and related felony offenses, waived his right to a jury, and was convicted and sentenced to death by a three-judge panel. The Sixth Circuit later vacated his death sentence because trial counsel was constitutionally ineffective during the mitigation hearing and remanded for a new

penalty-phase trial. On remand, the trial judge granted Foust's renewed motion to have a jury conduct the capital resentencing hearing despite his prior jury waiver.

PROCEDURAL HISTORY

Foust waived a jury and was convicted and sentenced to death by a three-judge panel. After the Sixth Circuit vacated his death sentence and remanded for a new penalty-phase trial, the trial court initially ruled that the original waiver applied and later granted Foust's renewed request for a jury based on *Hurst v. Florida*. The Ohio Supreme Court granted an alternative writ, granted a writ of prohibition, ordered the judge to vacate the jury order and conduct the hearing before a three-judge panel, and denied the mandamus request as moot.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Judge Collier-Williams must vacate the March 9, 2017 journal entry granting Foust's renewed motion for a jury resentencing hearing and conduct the capital resentencing hearing before a three-judge panel. The mandamus request is denied as moot.

CASES CITED

- *State v. Foust*, 105 Ohio St.3d 137, 2004-Ohio-7006, 823 N.E.2d 836
- *Foust v. Houk*, 655 F.3d 524 (6th Cir. 2011)
- *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016)
- *State v. Davis*, 139 Ohio St.3d 122, 2014-Ohio-1615, 9 N.E.3d 1031
- *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 740 N.E.2d 265 (2001)
- *State ex rel. Elder v. Camplese*, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138
- *State ex rel. Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, 2 N.E.3d 243
- *State v. Colon*, 2016-Ohio-707, 8th Dist. Cuyahoga No. 103150
- *State ex rel. Smith v. Cuyahoga Cty. Court of Common Pleas*, 106 Ohio St.3d 151, 2005-Ohio-4103, 832 N.E.2d 1206
- *State ex rel. Nichols v. Cuyahoga Cty. Bd. of Mental Retardation & Dev. Disabilities*, 72 Ohio St.3d 205, 648 N.E.2d 823 (1995)
- *State ex rel. Hardesty v. Williamson*, 9 Ohio St.3d 174, 459 N.E.2d 552 (1984)
- *State ex rel. Cleveland v. Calandra*, 62 Ohio St.2d 121, 403 N.E.2d 989 (1980)
- *State ex rel. Hamilton Cty. Bd. of Commrs. v. Hamilton Cty. Court of Common Pleas*, 126 Ohio St.3d 111, 2010-Ohio-2467, 931 N.E.2d 98
- *State ex rel. State v. Lewis*, 99 Ohio St.3d 97, 2003-Ohio-2476, 789 N.E.2d 195
- *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, 883 N.E.2d 420
- *State ex rel. Stewart v. Russo*, 145 Ohio St.3d 382, 2016-Ohio-421, 49 N.E.3d 1272

- State v. Palmer, 112 Ohio St.3d 457, 2007-Ohio-374, 860 N.E.2d 1011
- State v. Frohner, 150 Ohio St. 53, 80 N.E.2d 868 (1948)
- State ex rel. Mason v. Griffin, 104 Ohio St.3d 279, 2004-Ohio-6384, 819 N.E.2d 644
- Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- State ex rel. Morenz v. Kerr, 104 Ohio St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162