

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Crystal Samples

No. 17-0667 (W. Va. Oct. 12, 2018) · No. 17-0667 · Decided October 12, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the revocation of Crystal Samples’s probation and execution of her underlying sentences for identity theft and fraudulent schemes. The court held that the procedures discussed in State v. Duke were inapplicable because Samples had not been convicted of a subsequent offense resulting in a separate probationary term. It further held that her repeated positive drug tests constituted a violation of a probation condition designed to protect the public or a victim, permitting execution of the underlying sentences under West Virginia Code § 62-12-10.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Paul T. Farrell, sitting by temporary assignment; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Allen H. Loughry II, suspended and not participating
JURISDICTION	West Virginia
DECIDED	October 12, 2018
DOCKET	17-0667
DISPOSITION	affirmed
PROCEDURAL POSTURE	Crystal Samples appealed the Circuit Court of Clay County's order revoking her probation and executing her underlying sentences.
STANDARD OF REVIEW	The probation-revocation decision is reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law and statutory or rule interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21; the source text does not state a separate precedential designation.
PARTIES	Crystal Samples v. State of West Virginia

TOPICS

probation

criminal procedure

due process

statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether due process barred the circuit court from executing both underlying sentences when the second revocation petition and the court's advisement referred only to the five-year sentence for taking the identity of another person.
2. Whether West Virginia Code § 62-12-10 required the circuit court to impose no more than 120 days' confinement for the second probation violation or required additional findings before the court could execute the underlying sentences.
3. Whether the circuit court's erroneous finding that Samples failed to report to her probation officer required reversal of the probation-revocation order.

HOLDINGS

1. Due process did not bar execution of both underlying sentences. The procedures announced in *State v. Duke* were inapplicable because Samples was not convicted of a separate offense during probation and placed on a separate subsequent probationary term; her probation covered the previously imposed sentences for both convictions.
2. The 120-day confinement provision in West Virginia Code § 62-12-10(a)(2) did not limit the circuit court's authority because the violation involved a special probation condition designed to protect the public or a victim. Under § 62-12-10(a)(1), the court could revoke probation and execute the underlying sentence.
3. The erroneous finding that Samples failed to report did not require reversal because the revocation and execution of sentence were independently supported by her failed drug screen and the circuit court's finding that the violated condition was designed to protect the public and victim.

KEY QUOTATIONS

“Probation revocation proceedings are not . . . part of a criminal prosecution, and are not subject to the same strict procedural requirements attendant to a criminal trial.” (3)

“Accordingly, upon revocation of petitioner’s probation, the sentence to be imposed includes both the five-year term and the one- to ten-year term.” (5)

“This finding justified execution of petitioner’s sentence.” (6)

FACTUAL BACKGROUND

Samples pleaded guilty in 2012 to taking the identity of another person and fraudulent schemes and received consecutive sentences of five determinate years and one to ten indeterminate years. The circuit court suspended execution of those sentences and placed her on five years of probation, including conditions requiring drug

treatment and abstinence from drugs and alcohol. After a first violation involving positive drug tests, she received thirty days in jail and three additional years of probation. A second petition alleged additional positive tests for amphetamine and methamphetamine; Samples admitted the violation, and the circuit court revoked probation and executed both original sentences.

PROCEDURAL HISTORY

Samples pleaded guilty to taking the identity of another person and fraudulent schemes. The circuit court imposed consecutive sentences of five determinate years and one to ten indeterminate years, later suspended the sentences and placed her on probation. After a first violation resulted in thirty days' incarceration and an additional three years of probation, the State filed a second revocation petition based on positive amphetamine and methamphetamine tests. Samples admitted the violation, the circuit court revoked probation and executed both underlying sentences, and Samples appealed.

DISPOSITION

affirmed

CASES CITED

- State v. Duke, 200 W. Va. 356, 489 S.E.2d 738 (1997)
- State v. Holcomb, 178 W. Va. 455, 360 S.E.2d 232 (1987)
- Louk v. Haynes, 159 W. Va. 482, 223 S.E.2d 780 (1976)