

SUPREME COURT OF ARKANSAS

Davis v. Kelley

547 S.W.3d 54 (Ark. 2018) · Decided May 24, 2018

SUMMARY

The Arkansas Court of Appeals reviewed the dismissal of Carl Davis Jr.'s petition challenging the Arkansas Department of Correction's calculation of his parole eligibility and habitual-offender classification. The court held that applying the governing parole statutes did not violate the Ex Post Facto Clause. It further held that Davis's Class C felony perjury conviction could not be counted under the statutory definition of a qualifying felony, reversing and remanding on that issue.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	KAREN R. BAKER
JURISDICTION	Arkansas
DECIDED	May 24, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Davis appealed the Lincoln County Circuit Court's dismissal of his pro se petition for declaratory judgment and writ of mandamus challenging the Arkansas Department of Correction's calculation of his parole eligibility and habitual-offender classification.
STANDARD OF REVIEW	Denial of declaratory judgment is reviewed for clear error, while issues of statutory interpretation are reviewed de novo. Because the circuit court considered matters outside the pleadings, the dismissal was treated as summary judgment, which is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Carl Davis, Jr. v. Kelley

TOPICS

- statutory interpretation
- plain meaning rule
- ex post facto
- declaratory judgment
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether application of the parole-eligibility classification provisions enacted in Act 825 of the 1983 Acts of Arkansas to Davis's 1991 aggravated-robbery conviction violated the Ex Post Facto Clause because some prior convictions predated the Act.
2. Whether the ADC properly counted Davis's Class C felony perjury conviction and its concurrent term of incarceration in determining whether he qualified as a fourth offender under Arkansas Code Annotated section 16-93-606(b)(4).
3. Whether Davis had served the three qualifying prior terms of incarceration required for fourth-offender status.

HOLDINGS

1. Applying Act 825's parole-classification method to Davis's parole eligibility for his 1991 aggravated-robbery conviction did not violate the Ex Post Facto Clause, even though some prior convictions used in the classification predated the Act.
2. The ADC may not include Davis's Class C felony perjury conviction in calculating his habitual-offender status because section 16-93-606(a) defines felony, for purposes of that section, as a Class Y, Class A, or Class B felony.
3. Davis did not qualify as a fourth offender under section 16-93-606(b)(4) because, after excluding the Class C perjury conviction and term, he had served only two qualifying prior terms of incarceration rather than the required three.

KEY QUOTATIONS

"Based on the plain language used in section 16-93-606(a) to define "felony," the ADC incorrectly included Davis's perjury conviction in its calculation of Davis's status as a habitual offender." (547 S.W.3d at 57)

"Thus, when calculating Davis's prior convictions and commitments prior to the commission of the crime for which Davis was being classified-here, his 1991 aggravated-robbery conviction-Davis had been convicted of four prior "felonies." However, Davis had only served two prior terms of incarceration as contemplated by the statute." (547 S.W.3d at 58)

FACTUAL BACKGROUND

Davis was convicted of burglary and robbery in 1981, two burglaries and two thefts in 1983, perjury in 1985, and aggravated robbery in 1991. The ADC counted the 1985 Class C felony perjury conviction as a separate term of incarceration and classified Davis as a fourth offender, rendering him ineligible for parole under Arkansas's parole statutes. Davis challenged both the inclusion of the perjury conviction and the use of the 1983 Act's parole-classification method, arguing that the latter created an ex post facto violation.

PROCEDURAL HISTORY

The circuit court considered exhibits outside the pleadings and therefore treated the dismissal as a grant of summary judgment. It concluded that the ADC had correctly calculated Davis's classification and that application of the governing parole statutes did not violate the Ex Post Facto Clause. The Supreme Court of Arkansas affirmed on the ex post facto issue but reversed and remanded because the ADC improperly counted Davis's Class C felony perjury conviction and incarceration term.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to enter an order in compliance with the decision, excluding Davis's Class C felony perjury conviction and term of incarceration from the habitual-offender calculation.

CASES CITED

- Rogers v. Knight, 2017 Ark. 267, 527 S.W.3d 719
- Hotfoot Logistics, LLC v. Shipping Point Mktg., Inc., 2013 Ark. 130, 426 S.W.3d 448
- Hobbs v. Baird, 2011 Ark. 261
- Haile v. Johnston, 2016 Ark. 52, 482 S.W.3d 323
- Bramlett v. Hobbs, 2015 Ark. 146, 463 S.W.3d 283
- Woods v. Lockhart, 292 Ark. 37, 727 S.W.2d 849 (1987)
- Brown v. Lockhart, 288 Ark. 483, 707 S.W.2d 304 (1986)
- Tisdale v. Lockhart, 288 Ark. 203, 703 S.W.2d 849 (1986)
- State v. Colvin, 2013 Ark. 203, 427 S.W.3d 635