

SUPREME COURT OF FLORIDA

State v. Vargas

937 So. 2d 663 (Fla. 2006) · No. SC05-1125 · Decided August 31, 2006

SUMMARY

The Supreme Court of Florida quashed the Third District Court of Appeal's decision in Vargas v. State and remanded for reconsideration in light of Jones v. State. The court's decision addressed the standard applicable when portions of a criminal trial transcript are missing and cannot be reconstructed. Justice Pariente concurred in part and dissented in part regarding the burden imposed on the defendant to show potential prejudicial error.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Lewis, C.J.; Wells, J.; Quince, J.; Cantero, J.; Bell, J.; Pariente, J.; Anstead, J.
JURISDICTION	Florida
DECIDED	August 31, 2006
DOCKET	SC05-1125
DISPOSITION	quashed
PROCEDURAL POSTURE	The Supreme Court of Florida granted review of a decision of the Third District Court of Appeal that certified conflict with a Fourth District decision concerning the standard applicable when a criminal trial transcript is missing and cannot be reconstructed.
STANDARD OF REVIEW	The Supreme Court reviewed the certified-conflict decision pursuant to its conflict jurisdiction; the opinion does not state a separate standard of review.
PRECEDENTIAL VALUE	Published and precedential Florida Supreme Court opinion
PARTIES	State of Florida v. Osberto Dejesus Vargas

TOPICS

- appellate procedure
- appellate jurisdiction
- criminal procedure
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Third District's decision concerning a missing and unreconstructable trial transcript should be quashed and reconsidered in light of *Jones v. State*, 923 So. 2d 486 (Fla. 2006).
2. Whether the Supreme Court had jurisdiction to review the Third District's certified-conflict decision.

HOLDINGS

1. The Third District's decision in *Vargas v. State*, 902 So. 2d 166 (Fla. 3d DCA 2004), was quashed, and the matter was remanded to the Third District for reconsideration upon application of *Jones v. State*, 923 So. 2d 486 (Fla. 2006).
2. The Supreme Court of Florida had jurisdiction to review the case because the Third District certified conflict with a decision of another district court of appeal.

KEY QUOTATIONS

"On the authority of our decision in Jones v. State, 923 So.2d 486 (Fla.2006), the decision under review is quashed, and this matter is remanded to the Third District Court of Appeal for reconsideration upon application of this Court's decision in Jones." (664)

"A defendant who has potential grounds for reversal of a criminal conviction should not be penalized when the record of the trial court proceedings is lost in whole or part because of circumstances beyond his or her control." (664)

FACTUAL BACKGROUND

The case involved a criminal appeal in which some portion of the trial transcript was missing and could not be reconstructed. The Third District issued a decision addressing the consequences of the incomplete record and certified conflict with a Fourth District decision. The Supreme Court's majority resolved the case by directing the Third District to reconsider its decision under the Supreme Court's intervening decision in *Jones*.

PROCEDURAL HISTORY

The Third District Court of Appeal decided *Vargas v. State*, 902 So. 2d 166 (Fla. 3d DCA 2004), and certified conflict with *Jones v. State*, 870 So. 2d 904 (Fla. 4th DCA 2004). While *Vargas* was pending review, the Supreme Court decided *Jones v. State*, 923 So. 2d 486 (Fla. 2006). The Supreme Court granted review, quashed the Third District's decision, and remanded for reconsideration under *Jones*.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The matter was remanded to the Florida Third District Court of Appeal for reconsideration upon application of the Supreme Court's decision in *Jones v. State*, 923 So. 2d 486 (Fla. 2006).

CASES CITED

- *Vargas v. State*, 902 So. 2d 166 (Fla. 3d DCA 2004)
- *Jones v. State*, 870 So. 2d 904 (Fla. 4th DCA 2004)
- *Jones v. State*, 923 So. 2d 486 (Fla. 2006)

OPINION

PER CURIAM.

937 So.2d 663 (2006) *STATE of Florida, Petitioner, v. Osberto Dejesus VARGAS, Respondent*. No. SC05-1125. Supreme Court of Florida. August 31, 2006. Charles J. Crist, Jr., Attorney General, Tallahassee, FL, and Angel L. Fleming, Assistant Attorney General, Miami, FL, for Petitioner. Bennett J. Brummer, Public Defender, and Robert Kalter, Assistant Public Defender, Eleventh Judicial Circuit, Miami, FL, for Respondent.

PER CURIAM. We have for review *Vargas v. State*, 902 So.2d 166 (Fla. 3d DCA 2004), disapproved by, *Jones v. State*, 923 So.2d 486 (Fla. 2006), in which the Third District Court of Appeal certified conflict with the decision of the Fourth District Court of Appeal in *Jones v. State*, 870 So.2d 904 (Fla. 4th DCA 2004), approved, 923 So.2d 486 (Fla. 2006). At the time the Third District issued its decision in *Vargas*, *Jones* was pending review in this Court.

We have *664 jurisdiction. See art. V, § 3(b)(4), Fla. Const. The petition for review is granted. On the authority of our decision in *Jones v. State*, 923 So.2d 486 (Fla.2006), the decision under review is quashed, and this matter is remanded to the Third District Court of Appeal for reconsideration upon application of this Court's decision in *Jones*. It is so ordered.

LEWIS, C.J., and WELLS, QUINCE, CANTERO, and BELL, JJ., concur. PARIENTE, J., concurs in part and dissents in part with an opinion, in which ANSTEAD, J., concurs. PARIENTE, J., concurring in part and dissenting in part. I agree with the majority that the Third District Court of Appeal's decision in *Vargas v. State*, 902 So.2d 166 (Fla. 3d DCA 2004), should be quashed and the case remanded for reconsideration.

As I stated in my dissenting opinion in *Jones v. State*, 923 So.2d 486, 493-94 (Fla.2006), "[t]he standard applied by the Third District could be interpreted as requiring reversal whenever any portion of the trial transcript is missing and cannot be reconstructed regardless of the nature of the omitted proceeding or whether the omitted record is necessary for a complete review."

However, for the same reasons set forth in my opinion in *Jones*, I would not require that the defendant demonstrate a basis for a claim of prejudicial error. This requirement, adopted by the *Jones* majority,[1] imposes too great a burden on the defendant to demonstrate that a reversible

error occurred when the record has been lost through no fault of the defendant and cannot be reconstructed.

"A defendant who has potential grounds for reversal of a criminal conviction should not be penalized when the record of the trial court proceedings is lost in whole or part because of circumstances beyond his or her control." Jones, 923 So.2d at 491 (Pariente, C.J., dissenting).

Accordingly, I would remand this case to the Third District to apply the test enunciated in my dissent in Jones, which would "require a new trial if the appellant can point with specificity to potential reversible error and the State cannot establish there is no reasonable possibility error occurred." Id. ANSTEAD, J., concurs. NOTES [1] See 923 So.2d at 489 ("[T]his Court requires that the defendant demonstrate that there is a basis for a claim that the missing transcript would reflect matters which prejudice the defendant.").