

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Parrillo

468 Mass. 318 (2014) · Decided June 11, 2014

SUMMARY

The Massachusetts Supreme Judicial Court held that Commonwealth v. Cole required vacatur of John J. Parrillo's community parole supervision for life sentence because the CPSL scheme was unconstitutional under separation-of-powers principles. The court remanded for resentencing, permitting resentencing only insofar as it would not increase the aggregate punishment or violate double-jeopardy protections. The court did not reach the defendant's additional constitutional challenges to CPSL.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Cordy, J.
JURISDICTION	Massachusetts
DECIDED	June 11, 2014
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant appealed from the denial, without a hearing, of his Mass. R. Crim. P. 30(a) motion to correct an illegal sentence and vacate his community parole supervision for life sentence. The Massachusetts Supreme Judicial Court transferred the case from the Appeals Court on its own motion.
STANDARD OF REVIEW	The court reviewed the denial of a Mass. R. Crim. P. 30(a) motion concerning the legality and constitutionality of the sentence; the legal questions were reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Massachusetts Supreme Judicial Court opinion
PARTIES	John J. Parrillo v. Commonwealth

TOPICS

- sentencing
- criminal procedure
- separation of powers
- double jeopardy
- post-conviction relief

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Parrillo's community parole supervision for life sentence was unconstitutional.
2. Whether the court could vacate only the community parole supervision for life component or was required to permit resentencing on the integrated sentencing package.
3. Whether resentencing after a Rule 30(a) motion would violate double jeopardy principles.

HOLDINGS

1. The community parole supervision for life sentence was unconstitutional because the statutory scheme delegated the distinctly judicial power to impose sentences to the executive-branch parole board, violating separation-of-powers principles, and the unconstitutional provision was not severable from the remainder of the scheme.
2. Because CPSL was imposed as part of an integrated sentencing package, the entire sentencing scheme had to be vacated and the judge had to be afforded an opportunity to restructure the sentence.
3. Resentencing following the defendant's Rule 30(a) motion does not itself violate double jeopardy, but the aggregate punishment may not be increased and the resentencing must be quantitatively fair.

KEY QUOTATIONS

“There is no violation of the prohibition against double jeopardy in engaging in resentencing when a defendant files a rule 30 (a) motion to correct his sentence, because he “knowingly expose[s] himself to the possibility that his entire sentencing scheme might be restructured.”” (at 321)

“However, to accord with double jeopardy principles, resentencing must not result in any increase in the aggregate punishment and must be “quantitatively fair.”” (at 321)

FACTUAL BACKGROUND

In 2008, a jury found John J. Parrillo guilty of indecent assault and battery on a person over fourteen, simple assault and battery, and open and gross lewdness. He received prison terms, probation with special conditions, and community parole supervision for life, apparently on the indecent-assault conviction. By the time of appellate review, he had served the prison terms for the indecent-assault and simple-assault convictions and remained on probation for the suspended sentence on the lewdness conviction.

PROCEDURAL HISTORY

A jury convicted Parrillo in the District Court of indecent assault and battery on a person over fourteen, simple assault and battery, and open and gross lewdness. The trial judge imposed terms of imprisonment, probation, and community parole supervision for life. The judge denied Parrillo's Rule 30(a) motion in June 2011, and Parrillo appealed. The Supreme Judicial Court transferred the appeal and vacated the sentences, remanding for resentencing.

DISPOSITION

REMAND INSTRUCTIONS

The case was remanded to the District Court for resentencing consistent with the opinion. The judge may not resentence Parrillo on the indecent-assault and simple-assault convictions for which he had already served his sentences if doing so would increase punishment. The judge may resentence on the open-and-gross-lewdness conviction in the judge's discretion, provided the new sentence does not increase the aggregate punishment and is quantitatively fair.

CASES CITED

- Commonwealth v. Cole, 468 Mass. 294, 308-309, 311 (2014)
- Commonwealth v. Pagan, 445 Mass. 161, 174 (2005)
- Commonwealth v. Azar, 444 Mass. 72, 76-77 (2005)
- Commonwealth v. Renderos, 440 Mass. 422, 431-435 (2003)
- Commonwealth v. McGuinness, 421 Mass. 472, 475 (1995)
- Commonwealth v. Boyd, 73 Mass. App. Ct. 190, 197 (2008)
- Commonwealth v. Talbot, 444 Mass. 586, 597-598 (2005)
- Commonwealth v. Cumming, 466 Mass. 467, 471-474 (2013)
- Commonwealth v. Leggett, 82 Mass. App. Ct. 730, 737 (2012)
- Katz v. Commonwealth, 379 Mass. 305, 316 (1979)
- Osborne v. Commonwealth, 378 Mass. 104, 114-115 (1979)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)

OPINION

CORDY, J.

Cordy, J.

The defendant, John J. Parrillo, was convicted in 2008 of indecent assault and battery on a person over the age of fourteen, in violation of G. L. c. 265, § 13H, among other charges. He was sentenced to a period of imprisonment, probation, and community parole supervision for life (CPSL). He appeals the denial of his motion to correct an illegal sentence, CPSL, pursuant to Mass. R. Crim. P. 30 (a), as appearing in 435 Mass. 1501 (2001), on various grounds, including that his CPSL *319sentence is unconstitutional. We transferred the case on our own motion from the Appeals Court and heard the case concurrently with Commonwealth v. Cole, ante 294 (2014), and others raising questions regarding the constitutionality of the CPSL sentence.

The court held today in Cole that G. L. c. 127, § 133D (c), violates our separation of powers principles by delegating the distinctly judicial power to impose sentences to the parole board, an agency of the executive branch. The court further concluded that this unconstitutional provision is

not severable from the remainder of the CPSL scheme, thereby rendering the CPSL sentence unconstitutional. See *Cole*, supra at 308-309. Pursuant to the holding in *Cole*, we vacate the defendant's CPSL sentence and remand for resentencing.¹

Background. In 2008, a jury found the defendant guilty of indecent assault and battery on a person over the age of fourteen, G. L. c. 265, § 13H; simple assault and battery, G. L. c. 265, § 13A; and open and gross lewdness, G. L. c. 272, § 16. He was sentenced to several terms of imprisonment in the house of correction, probation with a variety of special conditions, and CPSL, presumably on the indecent assault and battery charge.²

In November, 2010, the defendant filed a motion to correct an illegal sentence pursuant to Mass. R. Crim. P. 30 (a), and requested that his CPSL sentence be vacated. He asserted that under *Commonwealth v. Pagan*, 445 Mass. 161, 174 (2005), the *320imposition of CPSL on a first-time offender was unconstitutional, and he had not been charged and convicted as a subsequent offender, for which CPSL would be mandatory. See G. L. c. 265, § 45. The motion judge, who was also the trial judge, denied the motion in June, 2011, without a hearing. In essence, the judge explained that he had exercised his discretion in imposing CPSL "as part of an overall sentencing scheme because of the crimes for which [the defendant] stands convicted, the defendant's criminal history, as well as his age." The defendant appealed the denial, and we transferred the case from the Appeals Court on our own motion.

Discussion. A rule 30 (a) motion is the proper mechanism by which to challenge the constitutionality of the CPSL sentencing scheme. *Commonwealth v. Azar*, 444 Mass. 72, 76-77 (2005). Apart from claiming that his CPSL sentence is unconstitutional, the defendant argues on appeal that the judge improperly sentenced him to CPSL as a first-time offender, pursuant to G. L. c. 265, § 45, after this court's rulings in *Pagan*, 445 Mass. at 174, and *Commonwealth v. Renderos*, 440 Mass. 422, 431-434 (2003), which together rendered the imposition of a CPSL sentence on first-time offenders under § 45 unconstitutional.³ See *Commonwealth v. McGuinness*, 421 Mass. 472, 475 (1995) (sentence "premised on a major misunderstanding by the sentencing judge as to the legal bounds of his authority" is illegal). We need not assess whether the defendant's CPSL sentence was properly imposed, because the CPSL sentence is now unconstitutional in any form. See *Cole*, supra. The defendant's CPSL sentence therefore must be vacated.

Although the defendant asks that only the CPSL portion of *321his sentence be affected, resentencing as to the entire sentencing scheme is appropriate here. See *Renderos*, 440 Mass. at 435; *Commonwealth v. Boyd*, 73 Mass. App. Ct. 190, 197 (2008). Where CPSL is imposed as part of an "integrated package" of sentences on multiple convictions, see *Renderos*, supra, the CPSL sentence "may have played a part in the judge's over-all concept in sentencing." *Commonwealth v. Talbot*, 444 Mass. 586, 597-598 (2005). Therefore, "the judge must be afforded the opportunity to restructure his sentence." *Id.* at 598. Accord *Commonwealth v. Cumming*, 466 Mass. 467, 472 (2013) ("It would not be possible to sever the CPSL requirement without fundamentally altering that judge's original intent"). There is no violation of the prohibition against double jeopardy in

engaging in resentencing when a defendant files a rule 30 (a) motion to correct his sentence, because he “knowingly expose[s] himself to the possibility that his entire sentencing scheme might be restructured.” *Id.* at 471. However, to accord with double jeopardy principles, resentencing must not result in any increase in the aggregate punishment and must be “quantitatively fair.” *Commonwealth v. Leggett*, 82 Mass. App. Ct. 730, 737 (2012). See *Cole*, *supra* at 311; *Cumming*, *supra* at 472-474; *Katz v. Commonwealth*, 379 Mass. 305, 316 (1979), citing *Osborne v. Commonwealth*, 378 Mass. 104, 114-115 (1979).

As far as we can discern from the record, the defendant has served his two and one-half year sentence on the indecent assault and battery conviction and his one-year sentence on the simple assault and battery conviction. He is currently on probation under a suspended sentence on the open and gross lewdness charge. His probation is set to expire on December 8, 2015. The judge may not resentence the defendant on the two convictions for which the defendant has already served his sentence, because any such resentencing would result in an increase in punishment in violation of double jeopardy principles. See *Cumming*, 466 Mass. at 473-474. The judge in his sound discretion may resentence on the open and gross lewdness conviction, provided the new sentence satisfies the double jeopardy principles set forth in *Cumming*, *supra*.

*322Conclusion. The defendant’s sentences are vacated, and the case is remanded to the District Court for resentencing consistent with this opinion.

So ordered.

Because we vacate the defendant’s community parole supervision for life (CPSL) sentence on other grounds, we need not consider whether his CPSL sentence violates the Sixth and Fourteenth Amendments to the United States Constitution, as interpreted in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny, and art. 12 of the Massachusetts Declaration of Rights, by imposing mandatory sentence increases without requiring that the facts meriting the increase be admitted to by the defendant or submitted to a jury.

The defendant was sentenced to two and one-half years in a house of correction for the indecent assault and battery charge, one year in the house of correction for the simple assault and battery charge (to be served from and after the first sentence), and two years in the house of correction on the open and gross lewdness charge, suspended for a five-year period of probation to commence from and after his release from the house of correction. The judge also set a number of special conditions on probation, including submitting to deoxyribonucleic acid sampling, complying with Sex Offender Registry Board registry requirements, wearing a global positioning system monitoring device, participating in sex offender treatment, and abstaining from any contact with persons under the age of eighteen or with any intellectual disability.

This argument stems in part from some confusion at the defendant’s sentencing as to the basis on which the judge imposed CPSL. The defendant articulates, and the record reflects, three potential

bases on which the judge may have rested the CPSL sentence: first, as a repeat offender, pursuant to the third sentence of G. L. c. 265, § 45, despite the fact that the defendant was not charged as such, see *Commonwealth v. Pagan*, 445 Mass. 161, 174 (2005); second, as a first-time offender, under the first sentence of G. L. c. 265, § 45, which we held in *Pagan*, *supra*, was unconstitutional; and third, as a condition of the probation imposed on the open and gross lewdness conviction, which reflected a potential misunderstanding on the part of the judge as to the relationship between CPSL and probation.