

SUPREME COURT OF OHIO

State v. Colon, 119 Ohio St. 3d 204

893 N.E.2d 169 (Ohio 2008) · Decided July 31, 2008

SUMMARY

The Ohio Supreme Court, on reconsideration, held that its ruling in State v. Colon, 118 Ohio St.3d 26 (2008) applies prospectively only to cases pending when that ruling was announced. The court further limited structural-error analysis for defective indictments to rare cases involving multiple trial errors linked to the indictment, stating that plain-error analysis ordinarily applies.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Pfeifer, J.; O'Connor, J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Wolff, J.
JURISDICTION	Ohio
DECIDED	July 31, 2008
DISPOSITION	other
PROCEDURAL POSTURE	The State of Ohio moved for reconsideration of the court's decision in State v. Colon, which held that a defective indictment omitting the mens rea element of the charged offense constituted structural error and that the defect was not waived by failure to object at trial.
STANDARD OF REVIEW	The court applied the prospective-application rule for newly announced constitutional criminal-procedure rules and clarified that unpreserved defective-indictment claims ordinarily receive plain-error review under Crim.R. 52(B), rather than structural-error review.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Vincent Colon v. State of Ohio

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- mens rea
- constitutional law

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether the rule announced in *State v. Colon* applies retroactively to convictions that became final before *Colon I* was announced.
2. Whether the structural-error analysis adopted in *Colon I* applies to all defective indictments omitting an essential element or is limited to cases involving multiple, inextricably linked trial errors.
3. Whether plain-error review under Crim.R. 52(B) is generally the appropriate analysis when a defendant fails to object to an indictment that omits an essential element.

HOLDINGS

1. The rule announced in *Colon I* applies prospectively only to cases pending on the date *Colon I* was announced and does not apply retroactively to convictions that had become final.
2. Structural-error analysis is appropriate for a defective indictment only in rare cases, such as *Colon I*, where multiple errors at trial are inextricably linked to the indictment defect and permeate the trial from beginning to end.
3. When a defendant fails to object to an indictment that omits an essential element of the charged offense, plain-error analysis under Crim.R. 52(B) is ordinarily appropriate.

KEY QUOTATIONS

“A new judicial ruling may be applied only to cases that are pending on the announcement date. The new judicial ruling may not be applied retroactively to a conviction that has become final, i.e., where the accused has exhausted all of his appellate remedies.” (119 Ohio St. 3d at 205, ¶ 4)

*“Applying structural-error analysis to a defective indictment is appropriate only in rare cases, such as *Colon I*, in which multiple errors at the trial follow the defective indictment.”* (119 Ohio St. 3d at 206, ¶ 8)

FACTUAL BACKGROUND

Colon I involved an indictment that failed to allege recklessness as an essential element of robbery. The omission was accompanied by multiple related trial errors: the defendant was not given notice that recklessness was an element, the State did not argue that his conduct was reckless, and the jury was not instructed that recklessness was required. The prosecutor instead treated robbery as a strict-liability offense.

PROCEDURAL HISTORY

In *Colon I*, the Supreme Court of Ohio held that *Colon*'s indictment was defective because it omitted recklessness, an essential element of robbery, and that the resulting error was not waived. On reconsideration, the court clarified that *Colon I*'s rule applies prospectively only to cases pending when *Colon I* was announced and confined its structural-error holding to the unusual circumstances presented there.

DISPOSITION

other

CASES CITED

- State v. Colon, 118 Ohio St. 3d 26, 2008-Ohio-1624, 885 N.E.2d 917
- State v. Evans, 32 Ohio St. 2d 185, 61 O.O.2d 422, 291 N.E.2d 466 (1972)
- State v. Lynn, 5 Ohio St. 2d 106, 108, 34 O.O.2d 226, 214 N.E.2d 226 (1966)
- Ali v. State, 104 Ohio St. 3d 328, 2004-Ohio-6592, 819 N.E.2d 687, ¶ 6
- State v. Perry, 101 Ohio St. 3d 118, 2004-Ohio-297, 802 N.E.2d 643, ¶ 17

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