

SUPREME COURT OF SOUTH DAKOTA

State of South Dakota v. Randy W. Powers

State v. Powers, 758 N.W.2d 918 (S.D. 2008) · No. No. 24790 · Decided December 10, 2008

SUMMARY

The Supreme Court of South Dakota affirmed Randy W. Powers's enhanced sentence for a fifth DUI offense. The court held that, under SDCL 32-23-4.1, periods of incarceration for any prior DUI violation are excluded when calculating the ten-year period for sentence enhancement, even when the incarceration does not relate to the oldest prior conviction.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Per Curiam; Chief Justice Gilbertson; Justice Sabers; Justice Konenkamp; Justice Zinter; Justice Meierhenry
JURISDICTION	South Dakota
DECIDED	December 10, 2008
DOCKET	No. 24790
DISPOSITION	affirmed
PROCEDURAL POSTURE	Powers appealed his conviction for driving under the influence and his sentence as a fifth-offense DUI offender, challenging the inclusion of a 1996 DUI conviction in the sentence-enhancement calculation.
STANDARD OF REVIEW	Statutory interpretation and application are reviewed de novo.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential
PARTIES	Randy W. Powers v. State of South Dakota

TOPICS

- statutory interpretation
- plain meaning rule
- sentencing
- criminal procedure
- standard of review

PRACTICE AREAS

- criminal law
- statutory interpretation
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether SDCL 32-23-4.1 requires exclusion from the ten-year sentence-enhancement calculation of any period of incarceration for a prior DUI violation, even when the incarceration was not attributable to the oldest prior conviction being evaluated.

HOLDINGS

1. The ten-year period for determining whether a prior DUI conviction may be used for sentence enhancement excludes any period during which the defendant was incarcerated for any prior violation of SDCL 32-23-1; the incarceration need not relate to the oldest prior conviction.

KEY QUOTATIONS

“The second sentence of SDCL 32-23-4.1 plainly states that the ten-year period excludes any period of incarceration for a prior violation of SDCL 32-23-1. This language does not require that the period of incarceration must relate to the oldest violation. Instead, the language requires the exclusion of any period of incarceration for any violation of SDCL 32-23-1.” (¶ 11)

FACTUAL BACKGROUND

Powers was arrested on June 30, 2007, for driving under the influence and was charged under SDCL 32-23-1(2), alternatively SDCL 32-23-1(1). The State alleged four prior DUI convictions, including convictions from 1996, 1997, and 2002-2003. Powers spent approximately twenty-one months incarcerated for the 2002 and 2003 DUI convictions. Although the 1996 conviction was more than ten years before the 2007 violation, excluding the incarceration period brought it within the statutory enhancement period.

PROCEDURAL HISTORY

Powers was charged with driving under the influence and received a Part II Information alleging four prior DUI convictions within ten years. Before trial and again during the habitual-offender proceeding, he moved to exclude the 1996 conviction because it occurred more than ten years before the current violation. The circuit court denied the motion, the jury convicted Powers of DUI, and the court sentenced him as a fifth offender to eight years' imprisonment. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Rotenberger v. Burghduff, 2007 SD 7, ¶ 8, 727 N.W.2d 291, 294
- State v. \$1,010.00 in Am. Currency, 2006 SD 84, ¶ 8, 722 N.W.2d 92, 94
- Chapman v. Chapman, 2006 SD 36, ¶ 11, 713 N.W.2d 572, 576
- Mid-Century Ins. Co. v. Lyon, 1997 SD 50, ¶ 9, 562 N.W.2d 888, 891
- In re Famous Brands, Inc., 347 N.W.2d 882, 885 (S.D. 1984)

