

SUPREME COURT OF WASHINGTON

State v. Mutch

171 Wash. 2d 646 (2011) · Decided June 9, 2011

SUMMARY

The Washington Supreme Court affirmed Richard Henry Mutch’s 400-month exceptional sentence following his convictions for five counts of second-degree rape and one count of second-degree kidnapping. The court held that the corrected offender score was properly calculated, that the trial court had authority to impose an exceptional sentence based on multiple current offenses and a high offender score resulting in otherwise unpunished offenses, and that no Sixth Amendment or notice violation occurred. The court also rejected Mutch’s double jeopardy claims, concluding from the entire trial record that the jury’s verdicts rested on five separate acts of rape.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Madsen, C.J.; C. Johnson, J.; Alexander, J.; Chambers, J.; Fairhurst, J.; J.M. Johnson, J.; Stephens, J.; Sanders, J. Pro Tem.
JURISDICTION	Washington
DECIDED	June 9, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct consolidated appeals from resentencing judgments imposing an exceptional sentence after the defendant's original persistent-offender life sentence was vacated.
STANDARD OF REVIEW	The offender-score calculation was reviewed de novo; the determination of same criminal conduct was reviewed for abuse of discretion or misapplication of law; constitutional challenges to the exceptional sentence and the double-jeopardy claim were reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Henry Mutch v. State of Washington

TOPICS

- sentencing
- double jeopardy
- sixth amendment
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal sentencing

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether Mutch's offender score was improperly calculated and whether the five rape convictions should have been treated as the same criminal conduct for sentencing purposes.
2. Whether the trial court had statutory authority to impose an exceptional sentence based on multiple current offenses and a high offender score that would otherwise leave some offenses unpunished.
3. Whether the exceptional sentence violated Mutch's Sixth Amendment right to a jury determination of aggravating facts.
4. Whether the exceptional sentence and resentencing violated the constitutional protection against double jeopardy.
5. Whether errors in the sentencing findings and the absence of the precise phrase "substantial and compelling reasons" invalidated the exceptional sentence.

HOLDINGS

1. The corrected offender score of 16 was valid, and the five rape counts were properly counted separately because the substantial breaks between the episodes gave Mutch time to pause, reflect, and form new criminal intent.
2. The trial court had statutory authority to impose an exceptional sentence under RCW 9.94A.535(2)(c) when multiple current offenses and a high offender score would otherwise result in some current offenses going unpunished.
3. The exceptional sentence did not violate Mutch's Sixth Amendment right to a jury trial because the relevant aggravating circumstance followed from prior convictions and the offender-score calculation and did not require jury fact-finding.
4. Although the jury instructions were deficient because they did not expressly require separate and distinct criminal acts for each rape count, the entire trial record made it manifestly apparent that the jury convicted Mutch of five separate acts; therefore, no actual double-jeopardy violation occurred.
5. Resentencing to correct an erroneous sentence did not violate double jeopardy, although conducting the second resentencing while appellate review was pending was unconventional and disfavored.

KEY QUOTATIONS

"We expressly held that RCW 9.94A.535(2)(c) does not violate the Sixth Amendment and that a trial court can impose an exceptional sentence based on the existence of "free crimes" without a jury finding." (658-659)

"Considering the evidence, arguments, and instructions, if it is not clear that it was "manifestly apparent to the jury that the State [was] not seeking to impose multiple punishments for the same offense" and that each count was based on a separate act, there is a double jeopardy violation." (664)

FACTUAL BACKGROUND

Over one night and the following morning, Mutch repeatedly raped J.L. in her home while threatening her with force. J.L. testified to five distinct episodes, with approximately hour-long breaks between the episodes and an overnight period between the first four and the fifth. Mutch was arrested after taking J.L. to obtain a marriage license, and he later admitted engaging in multiple sexual acts but claimed they were consensual.

PROCEDURAL HISTORY

Mutch was convicted by a jury of five counts of second degree rape and one count of second degree kidnapping. His original life sentence as a persistent offender was vacated because one strike offense was not comparable to a Washington strike offense. On remand, the trial court imposed a 400-month exceptional sentence, later conducted a second resentencing using a corrected offender score, and again imposed a 400-month exceptional sentence. The Washington Supreme Court consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Personal Restraint of Lavery, 154 Wn.2d 249, 258, 111 P.3d 837 (2005)
- State v. Parker, 132 Wn.2d 182, 189, 192-93, 937 P.2d 575 (1997)
- State v. Tili, 139 Wn.2d 107, 114, 122-25, 985 P.2d 365 (1999)
- State v. Walden, 69 Wn. App. 183, 188, 847 P.2d 956 (1993)
- State v. Grantham, 84 Wn. App. 854, 856-61, 932 P.2d 657 (1997)
- State v. French, 157 Wn.2d 593, 613, 141 P.3d 54 (2006)
- State v. Palmer, 95 Wn. App. 187, 190, 975 P.2d 1038 (1999)
- State v. Alvarado, 164 Wn.2d 556, 560-61, 563, 568-69, 192 P.3d 345 (2008)
- State v. Stephens, 116 Wn.2d 238, 243-44, 803 P.2d 319 (1991)
- State v. Smith, 123 Wn.2d 51, 56, 864 P.2d 1371 (1993)
- State v. Hughes, 154 Wn.2d 118, 140, 110 P.3d 192 (2005)
- Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006)
- Blakely v. Washington, 542 U.S. 296, 301, 313-14, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- State v. Smith, 150 Wn.2d 135, 143, 75 P.3d 934 (2003)
- State v. Jones, 159 Wn.2d 231, 241, 243, 149 P.3d 636 (2006)
- United States v. Moore, 401 F.3d 1220, 1225 (10th Cir. 2005)
- State v. Thieffault, 160 Wn.2d 409, 418-20, 158 P.3d 580 (2007)
- State v. Jackson, 150 Wn.2d 251, 276, 76 P.3d 217 (2003)
- State v. Noltie, 116 Wn.2d 831, 848-49, 809 P.2d 190 (1991)
- State v. Jackman, 156 Wn.2d 736, 746, 132 P.3d 136 (2006)
- In re Personal Restraint of Francis, 170 Wn.2d 517, 523, 242 P.3d 866 (2010)
- State v. Carter, 156 Wn. App. 561, 567-68, 234 P.3d 275 (2010)

- State v. Berg, 147 Wn. App. 923, 931, 934-35, 198 P.3d 529 (2008)
- State v. Borsheim, 140 Wn. App. 357, 367, 369, 165 P.3d 417 (2007)
- State v. Kier, 164 Wn.2d 798, 809-11, 194 P.3d 212 (2008)
- State v. Ellis, 71 Wn. App. 400, 402, 404-05, 859 P.2d 632 (1993)
- State v. Hayes, 81 Wn. App. 425, 440, 914 P.2d 788 (1996)
- State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998)
- State v. Bobenhouse, 166 Wn.2d 881, 894-95, 214 P.3d 907 (2009)
- State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002)
- Neder v. United States, 527 U.S. 1, 19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)
- State v. Freitag, 127 Wn.2d 141, 145, 896 P.2d 1254, 905 P.2d 355 (1995)
- State v. Osman, 157 Wn.2d 474, 482, 139 P.3d 334 (2006)
- State v. Khanteechit, 101 Wn. App. 137, 139, 5 P.3d 727 (2000)
- State v. Powell, 167 Wn.2d 672, 689, 691, 223 P.3d 493 (2009)
- State v. Pillatos, 159 Wn.2d 459, 465, 150 P.3d 1130 (2007)

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