

SUPREME COURT OF OREGON

State of Oregon v. Ivey Wayne Barrett; Linda Diane Barrett v. State of Oregon and Ivey Wayne Barrett, 350 Or. 390

255 P.3d 472 (2011) · No. CC D110426M; SC S059423 · Decided May 27, 2011

SUMMARY

The Oregon Supreme Court held that the state violated a crime victim's constitutional right to advance notice of and participation in the defendant's plea and sentencing proceedings. The court ruled that vacating the defendant's sentence and ordering resentencing was a permissible remedy under Article I, section 42(3)(a), of the Oregon Constitution and was not barred by the Double Jeopardy Clause or the statutory waiver provision. The court reversed and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	De Muniz, C.J.; De Muniz, Chief Justice; Durham, Justice; Kistler, Justice; Walters, Justice; Linder, Justice; Landau, Justice
JURISDICTION	Oregon
DECIDED	May 27, 2011
DOCKET	CC D110426M; SC S059423
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The crime-victim appellant brought an interlocutory appeal under ORS 147.537 from the circuit court's order finding violations of her constitutional and statutory rights but denying her requested remedy of vacating the defendant's sentence and conducting a resentencing hearing.
STANDARD OF REVIEW	Under ORS 147.537(17), the Supreme Court could not substitute its judgment for the trial court's factual findings and reviewed challenges to those findings for evidence in the record supporting them. The legal questions, including constitutional interpretation and the availability of resentencing as a remedy, were reviewed as questions of law.
PRECEDENTIAL VALUE	binding precedent
PARTIES	Linda Diane Barrett v. State of Oregon, Ivey Wayne Barrett

TOPICS

criminal procedure

double jeopardy

sentencing

appellate procedure

statutory interpretation

PRACTICE AREAS

criminal law

constitutional law

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victims' rights

sentencing

QUESTIONS PRESENTED

1. Whether the victim established a violation of her Oregon constitutional right to advance notice of and presence at critical stages of the criminal proceeding.
2. Whether vacating the defendant's sentence and conducting a resentencing hearing was a permissible remedy under Article I, section 42 of the Oregon Constitution.
3. Whether the victim waived the requested remedy under ORS 147.533 because it was sought after former jeopardy attached.
4. Whether resentencing the defendant would violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

HOLDINGS

1. The victim established a violation of Article I, section 42(1)(a), of the Oregon Constitution because she specifically requested advance notice of critical-stage proceedings and that request was made before the plea and sentencing hearing.
2. Vacating the defendant's sentence and conducting a resentencing hearing is a permissible remedy under Article I, section 42(3)(a), because a sentence is neither a conviction nor a juvenile adjudication protected from invalidation by Article I, section 42(2), but is instead a ruling of a court.
3. The victim did not waive the requested remedy by seeking it after former jeopardy attached because ORS 147.533(2)(a) exempts remedies that may be effectuated after disposition of the criminal proceeding, and resentencing falls within that exception.
4. The Double Jeopardy Clause does not bar vacating the defendant's sentence and conducting a resentencing hearing, even if the sentence could be increased.

KEY QUOTATIONS

“The victim was entitled to a remedy by due course of law under Article I, section 42(3)(a). Her proposed remedy vacating defendant's sentence and conducting a resentencing hearing was permissible, in that it was not barred by the Double Jeopardy Clause.” (482)

“The order of the circuit court is reversed, defendant's sentence is vacated, and the case is remanded to the circuit court for resentencing.” (482)

FACTUAL BACKGROUND

Ivey Wayne Barrett was charged with stalking Linda Diane Barrett, his estranged wife, a Class A misdemeanor. Linda Barrett specifically requested advance notice of critical-stage proceedings, including the plea and sentencing, and submitted the required form to the district attorney's office before those proceedings occurred. Despite that request, Barrett pleaded guilty and was immediately sentenced to two years' probation on February 28, 2011, without the victim present and without the prosecutor and court completing the required statutory colloquy.

PROCEDURAL HISTORY

Ivey Wayne Barrett pleaded guilty to misdemeanor stalking and was sentenced to two years' probation without the victim receiving advance notice or being present. The victim filed a statutory claim alleging violations of her crime-victim rights, and the prosecutor separately sought to vacate the sentence and resentence Barrett. The circuit court found violations but concluded that no remedy was available. The Oregon Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the defendant's sentence and conduct a resentencing hearing at which the victim may appear and be heard. The trial court is not required to impose a different sentence.

CASES CITED

- Burt v. Blumenauer, 299 Or. 55, 699 P.2d 168 (1985)
- Rico-Villalobos v. Giusto, 339 Or. 197, 118 P.3d 246 (2005)
- State v. Conger, 319 Or. 484, 878 P.2d 1089 (1994)
- Zockert v. Fanning, 310 Or. 514, 800 P.2d 773 (1990)
- Li v. State of Oregon, 338 Or. 376, 110 P.3d 91 (2005)
- State v. Cox, 336 Or. 284, 82 P.3d 619 (2003)
- Vasquez v. Courtney, 272 Or. 477, 537 P.2d 536 (1975)
- State v. Hoffman, 236 Or. 98, 385 P.2d 741 (1963)
- United States v. DiFrancesco, 449 U.S. 117, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980)
- North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)