

SUPREME COURT OF KANSAS

State v. Key, 298 Kan. 315

312 P.3d 355 (2013) · Decided November 8, 2013

SUMMARY

The Kansas Supreme Court held that Sean Key's guilty or no contest plea barred appellate review of his challenge to the felony classification of his DUI conviction because he had not moved to withdraw the plea. However, the plea did not deprive the appellate courts of jurisdiction to review whether a prior misdemeanor DUI conviction was improperly used to enhance his sentence. The court reversed the Court of Appeals' dismissal and remanded for consideration of the sentencing challenge.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.
JURISDICTION	Kansas
DECIDED	November 8, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Key petitioned for review of the Kansas Court of Appeals' dismissal of his appeal for lack of jurisdiction. The Supreme Court of Kansas held that his guilty or no-contest plea barred appellate review of his felony conviction but did not bar review of his sentence, and remanded to the Court of Appeals.
STANDARD OF REVIEW	Subject matter jurisdiction, statutory interpretation, and interpretation of prior caselaw are reviewed de novo.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Sean Aaron Key v. State of Kansas

TOPICS

appellate jurisdiction sentencing criminal procedure preliminary hearing statutory interpretation

PRACTICE AREAS

criminal procedure appellate procedure sentencing statutory interpretation

QUESTIONS PRESENTED

1. Whether a guilty or no-contest plea barred appellate jurisdiction over Key's challenge to the felony classification of his current DUI conviction.
2. Whether appellate jurisdiction remained over Key's challenge to the use of the prior misdemeanor DUI conviction to enhance the sentence in the current felony DUI case.
3. Whether the appeal was governed by the sentencing-appeal provisions of K.S.A. 22-3602(f).
4. What procedural steps are generally necessary to preserve challenges to prior DUI convictions used as classification or sentencing factors.

HOLDINGS

1. A guilty or no-contest plea, absent an unsuccessful motion to withdraw the plea, eliminates appellate jurisdiction over a challenge to the felony conviction or classification of the offense.
2. A guilty or no-contest plea does not eliminate appellate jurisdiction to review the sentence imposed in the current felony case, including whether an allegedly invalid prior misdemeanor DUI was properly used to enhance that sentence.
3. Key's sentencing appeal was not governed by K.S.A. 22-3602(f) because his sentence was imposed under the self-contained habitual-criminal provisions of K.S.A. 2007 Supp. 8-1567, not under the Kansas Sentencing Guidelines Act's presumptive grid system.
4. A successful appellate challenge to the use of an invalid prior misdemeanor DUI may result in vacation of the enhanced felony sentence and resentencing as misdemeanor DUI, but it does not erase the prior misdemeanor conviction; vacatur of that conviction must be sought under K.S.A. 60-1507.

KEY QUOTATIONS

“A guilty or no contest plea surrenders a criminal defendant’s right to appeal his or her conviction but not his or her sentence.” (at 321)

“In other words, each side is half right.” (at 322)

“A successful appellate challenge on that ground will not erase the prior conviction; only a successful motion under K.S.A. 60-1507 can do that.” (at 323)

FACTUAL BACKGROUND

A highway patrol trooper stopped Key after observing his vehicle swerve over the fog line multiple times. The trooper smelled alcohol, observed that Key's eyes were glassy, and saw him fail field sobriety and preliminary breath tests. Because Key had two prior DUI convictions, the State charged the new DUI as a nonperson felony. Key asserted that his February 2007 misdemeanor DUI conviction was invalid because his attorney entered an unauthorized guilty plea without consulting him.

PROCEDURAL HISTORY

Key was charged with felony DUI based on two prior misdemeanor DUI convictions. He challenged the validity of one prior conviction, entered a guilty or no-contest plea to the felony charge, and received a one-year sentence. The district court overruled his sentencing objection. The Court of Appeals dismissed his appeal because he had not moved to withdraw his plea. The Supreme Court of Kansas reversed that dismissal and remanded for consideration of the merits of his sentencing challenge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Kansas Court of Appeals to consider the merits of Key's claim that he should have been sentenced for misdemeanor rather than felony DUI, including whether the allegedly unauthorized prior guilty plea invalidated the prior misdemeanor for enhancement purposes and whether resentencing was required.

CASES CITED

- State v. Garza, 295 Kan. 326, 286 P.3d 554 (2012)
- State v. Burnett, 293 Kan. 840, 270 P.3d 1115 (2012)
- State v. Seems, 277 Kan. 303, 84 P.3d 606 (2004), affirming State v. Seems, 31 Kan. App. 2d 794, 74 P.3d 55 (2003)
- State v. Chamberlain, 280 Kan. 241, 120 P.3d 319 (2005)
- State v. Helgeson, 235 Kan. 534, 680 P.2d 910 (1984)
- State v. Masterson, 261 Kan. 158, 929 P.2d 127 (1996)
- State v. Loudermilk, 221 Kan. 157, 557 P.2d 1229 (1976)
- State v. Moody, 282 Kan. 181, 144 P.3d 612 (2006)
- State v. Larson, 265 Kan. 160, 958 P.2d 1154 (1998)
- State v. Elliott, 281 Kan. 583, 133 P.3d 1253 (2006)
- State v. Neal, 292 Kan. 625, 258 P.3d 365 (2011)
- State v. Delacruz, 258 Kan. 129, 899 P.2d 1042 (1995)
- State v. Bricker, 292 Kan. 239, 252 P.3d 118 (2011)
- Thompson v. State, 293 Kan. 704, 270 P.3d 1089 (2011)
- State v. Osoba, 234 Kan. 443, 672 P.2d 1098 (1983)
- State v. Schow, 287 Kan. 529, 197 P.3d 825 (2008)
- State v. Crank, 262 Kan. 449, 939 P.2d 890 (1997)
- State v. Floyd, 218 Kan. 764, 544 P.2d 1380 (1976)

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