

SUPREME COURT OF KANSAS

State v. Dickey, 301 Kan. 1018

350 P.3d 1054 (2015) · Decided May 22, 2015

SUMMARY

The Kansas Supreme Court held that Jeff Dickey could challenge for the first time on appeal the classification of his prior juvenile burglary adjudication for criminal-history purposes. Because the prior burglary statute did not require that the burglarized structure be a dwelling, classifying the adjudication as a person felony would require unconstitutional judicial factfinding under Descamps and Apprendi. The court vacated Dickey's sentence and remanded for resentencing with the adjudication classified as a nonperson felony.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Rosen, J.
JURISDICTION	Kansas
DECIDED	May 22, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed the Court of Appeals decision vacating Dickey's sentence and remanding for resentencing. Dickey filed a cross-petition for review concerning the applicability of State v. Murdock.
STANDARD OF REVIEW	Questions concerning the classification of a prior conviction or adjudication for criminal-history purposes and whether a sentence is illegal are reviewed de novo or without limitation.
PRECEDENTIAL VALUE	Published and precedential Kansas Supreme Court opinion.
PARTIES	State v. Jeff Dickey

TOPICS

sentencing criminal procedure sixth amendment appellate procedure statutory interpretation

PRACTICE AREAS

criminal law criminal sentencing appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether Dickey's challenge to the classification of his prior burglary adjudication could be raised for the first time on appeal despite his failure to object to, and apparent stipulation concerning, his criminal history score at sentencing.
2. Whether State v. Murdock's treatment of pre-Kansas Sentencing Guidelines Act out-of-state offenses applied to Dickey's pre-KSGA in-state juvenile burglary adjudication.
3. Whether applying the Kansas statute governing classification of prior burglaries required unconstitutional judicial factfinding under Descamps v. United States and Apprendi v. New Jersey.
4. Whether Dickey's 1992 burglary adjudication should be classified as a person or nonperson felony for criminal-history purposes.

HOLDINGS

1. A legal challenge to the classification of a prior conviction or juvenile adjudication, and to the resulting criminal-history score, may be raised for the first time on appeal as a challenge to an illegal sentence under K.S.A. 22-3504(1), even when the defendant failed to object or stipulated to the score at sentencing.
2. State v. Murdock did not apply to the classification of Dickey's pre-KSGA in-state burglary adjudication because K.S.A. 2014 Supp. 21-6811(d) specifically governs classification of prior Kansas burglaries.
3. The categorical and modified categorical approaches described in Descamps apply when determining whether a prior Kansas burglary conviction or adjudication is a person or nonperson felony under the KSGA.
4. Dickey's 1992 juvenile burglary adjudication must be classified as a nonperson felony because the 1991 burglary statute did not include dwelling status as an element, and classifying the adjudication as a person felony would require constitutionally prohibited judicial factfinding.

KEY QUOTATIONS

"Stipulations as to what the law is are not effective and not controlling on this court." (1032)

"Perhaps more to the point here, 'Kansas law is clear that a defendant can't agree to an illegal sentence.'" (1032)

"Though Descamps involved determining whether a prior conviction qualified as a predicate offense under the ACCA, the methods Descamps outlined for making this determination in a constitutionally valid manner necessarily apply to determining whether a prior burglary conviction should be classified as a person or nonperson felony under the KSGA." (1039)

FACTUAL BACKGROUND

Dickey pleaded guilty to felony theft in April 2013. His presentence investigation report listed 55 prior convictions and adjudications and assigned him a criminal history score of A based in part on a 1992 juvenile adjudication for burglary, classified as a person felony. The 1991 burglary statute did not require that the burglarized structure be a dwelling, but the current Kansas sentencing statute classified a prior burglary as a

person felony only if it involved a dwelling. The resulting A-9 classification produced a 16-month prison sentence.

PROCEDURAL HISTORY

Dickey pleaded guilty to felony theft and received a 16-month sentence based on a criminal history score of A, which included a 1992 Kansas juvenile burglary adjudication classified as a person felony. The Court of Appeals held that the classification violated the constitutional principles described in *Descamps v. United States* and *Apprendi v. New Jersey*, vacated the sentence, and remanded for resentencing. The Kansas Supreme Court granted review, affirmed the result on a different waiver rationale, rejected *Murdock* as applicable authority, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the sentence and remand to the district court for resentencing, with instructions to classify Dickey's 1992 burglary adjudication as a nonperson felony for purposes of calculating his criminal-history score.

CASES CITED

- *Descamps v. United States*, 570 U.S. 254, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013)
- *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- *State v. Murdock*, 299 Kan. 312, 323 P.3d 846 (2014)
- *State v. Floyd*, 296 Kan. 685, 294 P.3d 318 (2013)
- *State v. Rogers*, 297 Kan. 83, 298 P.3d 325 (2013)
- *State v. Scherzer*, 254 Kan. 926, 869 P.2d 729 (1994)
- *State v. Vandervort*, 276 Kan. 164, 72 P.3d 925 (2003)
- *State v. Goeller*, 276 Kan. 578, 77 P.3d 1272 (2003)
- *State v. McBride*, 23 Kan. App. 2d 302, 930 P.2d 618 (1996)
- *State v. Neal*, 292 Kan. 625, 258 P.3d 365 (2011)
- *State v. Weber*, 297 Kan. 805, 304 P.3d 1262 (2013)
- *State v. Trotter*, 296 Kan. 898, 295 P.3d 1039 (2013)
- *State v. Williams*, 291 Kan. 554, 244 P.3d 667 (2010)
- *State v. May*, 39 Kan. App. 2d 990, 186 P.3d 847 (2008)
- *State v. Conley*, 270 Kan. 18, 11 P.3d 1147 (2000)
- *State v. Anthony*, 273 Kan. 726, 45 P.3d 852 (2002)
- *State v. Ivory*, 273 Kan. 44, 41 P.3d 781 (2002)
- *Shepard v. United States*, 544 U.S. 13, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005)
- *Johnson v. United States*, 559 U.S. 133, 130 S. Ct. 1265, 176 L. Ed. 2d 1 (2010)

- State v. Thomas, 220 Kan. 104, 551 P.2d 873 (1976)
- Ritchie Raving, Inc. v. City of Deerfield, 275 Kan. 631, 67 P.3d 843 (2003)
- Makthepharak v. State, 298 Kan. 573, 314 P.3d 876 (2013)

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