

SUPREME COURT OF SOUTH CAROLINA

Robinson v. State, 380 S.C. 201

669 S.E.2d 588 (2008) · No. No. 26564 · Decided November 24, 2008

SUMMARY

The Supreme Court of South Carolina held that an uncounseled prior misdemeanor conviction, for which the defendant later served jail time, could not constitutionally be used to enhance his sentence for a subsequent trafficking conviction. The court found plea counsel ineffective for failing to challenge the enhancement and remanded the case for resentencing, while rejecting the claim that the guilty plea was involuntary.

CASE DETAILS

|                       |                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Carolina                                                                                                                                                                       |
| WRITING FOR THE COURT | Chief Justice Toal; Justice Waller; Justice Pleicones; Justice Beatty; Justice Kittredge                                                                                                              |
| JURISDICTION          | South Carolina                                                                                                                                                                                        |
| DECIDED               | November 24, 2008                                                                                                                                                                                     |
| DOCKET                | No. 26564                                                                                                                                                                                             |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | The South Carolina Supreme Court granted certiorari to review the denial of Robinson's application for post-conviction relief alleging ineffective assistance of plea counsel.                        |
| STANDARD OF REVIEW    | The applicant bears the burden of proving the allegations in a post-conviction proceeding, and the PCR court's ruling should be upheld if supported by any evidence of probative value in the record. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of South Carolina                                                                                                                                 |
| PARTIES               | Marcus D. Robinson v. State of South Carolina                                                                                                                                                         |

TOPICS

- state post-conviction relief
- ineffective assistance
- sentencing
- right to counsel

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether plea counsel was ineffective for failing to challenge the use of Robinson's prior uncounseled misdemeanor conviction to enhance the sentence.
2. Whether Robinson was prejudiced even though his twenty-year sentence was within the sentencing range for a first offense.
3. Whether the appropriate relief was resentencing rather than withdrawal of the guilty plea.

## HOLDINGS

1. A prior uncounseled misdemeanor conviction may be used to enhance a sentence only when the defendant was not actually imprisoned as a result of that conviction. Because Robinson later served jail time as a result of the prior conviction, it could not constitutionally be used to enhance his sentence.
2. The fact that a defendant's sentence falls within the sentencing range for a first offense does not establish the absence of prejudice from counsel's failure to challenge an improperly used sentence enhancer.
3. Robinson failed to establish that his guilty plea was involuntary because he testified that he wanted to plead guilty and did not want to go to trial.
4. When an unconstitutional prior conviction was used to enhance a sentence, the proper relief is resentencing rather than withdrawal of the guilty plea.

## KEY QUOTATIONS

*"A defendant's prior uncounseled misdemeanor conviction may only be used to enhance his sentence for a subsequent conviction if the defendant was not actually imprisoned as a result of the prior conviction."* (at 205)

*"Because the sentence was not determined based on the 'informed discretion of a trial judge, but . . . upon misinformation of constitutional magnitude,' the court remanded the case for resentencing."* (at 206)

## FACTUAL BACKGROUND

Robinson pleaded guilty to trafficking crack cocaine in 2003 and was sentenced to twenty years after a 2000 uncounseled magistrate-court marijuana-possession conviction was used to treat the trafficking offense as a second offense. Although the prior conviction initially resulted in a public-service sentence, Robinson later served jail time after failing to complete the public service. Robinson testified that he wanted to plead guilty but believed he was pleading to trafficking as a first offense rather than a second offense.

## PROCEDURAL HISTORY

Robinson pleaded guilty to trafficking crack cocaine and received a twenty-year sentence after the State and plea judge treated a prior uncounseled marijuana-possession conviction as a second-offense sentence enhancer. The PCR court found counsel should have challenged the prior conviction but denied relief because Robinson's

sentence was below the maximum for a first offense. The Supreme Court reversed the PCR court's order and instructed that Robinson be resentenced.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

The PCR court was instructed to remand the case for resentencing without using Robinson's prior uncounseled conviction as a sentence enhancer.

#### CASES CITED

- Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985)
- Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)
- Nichols v. United States, 511 U.S. 738, 749 (1994)
- Glaze v. State, 366 S.C. 271, 274-75, 621 S.E.2d 655, 657 (2005)
- Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000)
- United States v. Tucker, 404 U.S. 443, 447 (1972)
- State v. Rich, 269 S.C. 701, 702, 705, 239 S.E.2d 731, 732-33 (1977)
- Roscoe v. State, 345 S.C. 16, 22, 546 S.E.2d 417, 420 (2001)