

SUPREME COURT OF WYOMING

Bitz v. State

78 P.3d 257 (Wyo. 2003) · No. No. 02-169 · Decided October 31, 2003

SUMMARY

The Wyoming Supreme Court reviewed Delvin Lee Bitz's sentence following his guilty plea to taking indecent liberties with a minor. The court held that the district court improperly relied on contested, dismissed charges in the presentence investigation without making the findings required by W.R.Cr.P. 32(a)(3)(C), and improperly considered a victim impact statement from a person who was not the victim of the charged offense. The conviction was reversed and the matter remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Voigt, Justice; Hill, C.J.; Golden, J.; Lehman, J.; Kite, J.; Voigt, J.
JURISDICTION	Wyoming
DECIDED	October 31, 2003
DOCKET	No. 02-169
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a conviction and sentence for taking indecent liberties with a minor. After pleading guilty pursuant to an agreement, the defendant challenged the district court's consideration at sentencing of dismissed and denied charges and a victim-impact statement from a person who was not the victim of the charged offense.
STANDARD OF REVIEW	Sentencing decisions are reviewed for abuse of discretion. Reversal requires an abuse of discretion, prejudicial procedural conduct, and circumstances manifesting inherent unfairness and injustice or offending the public sense of fair play; the appellant bears the burden of establishing prejudice and that the sentencing judge relied on false or improper premises.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Delvin Lee Bitz v. The State of Wyoming

TOPICS

sentencing

criminal procedure

due process

statutory interpretation

appellate procedure

PRACTICE AREAS

criminal law

criminal sentencing

appellate procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether the district court abused its discretion and violated due process by relying at sentencing on disputed and dismissed charges without making the findings required by W.R.Cr.P. 32(a)(3)(C).
2. Whether the district court improperly considered a victim-impact statement from a person who was not the victim of the crime to which the defendant pleaded guilty.

HOLDINGS

1. A sentencing court may consider uncharged crimes and other information in a presentence investigation report only if the defendant has an opportunity to deny, dispute, or disprove the information and the court complies with W.R.Cr.P. 32(a)(3)(C). When the defendant contests the information and the court intends to rely on it, the court must make a finding based on sufficient evidence that the information is reliable, create a written record supporting the finding, and append that record to the presentence investigation report. The district court's reliance on Bitz's dismissed and denied charges without those findings was an abuse of discretion and violated due process.
2. Under Wyo. Stat. Ann. § 7-21-103, the special statutory status and admissibility of a victim-impact statement are limited to the victim of the particular crime for which the defendant is being sentenced. The district court erred by treating the defendant's daughter's statement as a statutory victim-impact statement when the charged offense involved the defendant's step-daughter, and the error was prejudicial because the court quoted from and relied on the statement in imposing sentence.

KEY QUOTATIONS

“Once a defendant has alleged a factual inaccuracy in the PSI, the district court must either make a finding as to the contested matter or make a determination that no finding is necessary because the matter will not be considered for sentencing.” (78 P.3d at 261)

“Neither the fact that the charges were bound over for trial after a probable cause hearing nor the fact that the district court did not believe the appellant is a sufficient finding that the appellant committed the contested offenses.” (78 P.3d at 261)

“At sentencing, the district court may consider uncharged crimes and other evidence from the PSI so long as the defendant is allowed the opportunity to deny, dispute, or disprove such evidence and so long as the district court complies with W.R.Cr.P. 32(a)(3)(C).” (78 P.3d at 263)

FACTUAL BACKGROUND

Bitz originally faced multiple sexual-assault charges involving his step-daughter and daughter, but pleaded guilty under an agreement to one amended count of taking indecent liberties with his step-daughter. The presentence

investigation report included allegations relating to the dismissed charges, which Bitz denied, and victim-impact statements from both his step-daughter and daughter. The district court relied on the dismissed allegations and quoted from the daughter's statement at sentencing, then imposed five to eight years' imprisonment.

PROCEDURAL HISTORY

The defendant was originally charged with multiple sexual-assault counts involving his step-daughter and daughter. He entered a plea agreement under which he pleaded guilty to one amended count of taking indecent liberties with his step-daughter, while the State agreed to dismiss and not refile the remaining charges; the parties argued sentencing. At sentencing, the district court considered the dismissed charges and the daughter's victim-impact statement and imposed five to eight years' imprisonment. The Wyoming Supreme Court reversed and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for resentencing without reliance on disputed dismissed charges unless the district court complies with W.R.Cr.P. 32(a)(3)(C), and without treating the daughter's statement as a statutory victim-impact statement for the charged offense.

CASES CITED

- Mehring v. State, 860 P.2d 1101 (Wyo. 1993)
- Hamill v. State, 948 P.2d 1356 (Wyo. 1997)
- Smith v. State, 941 P.2d 749 (Wyo. 1997)
- Candelaria v. State, 895 P.2d 434 (Wyo. 1995)
- Robinson v. Hamblin, 914 P.2d 152 (Wyo. 1996)
- Lee v. State, 2001 WY 129, 36 P.3d 1133 (Wyo. 2001)
- Trusky v. State, 7 P.3d 5 (Wyo. 2000)
- Halbleib v. State, 7 P.3d 45 (Wyo. 2000)
- Jones v. State, 771 P.2d 368 (Wyo. 1989)
- Blankinship v. State, 974 P.2d 377 (Wyo. 1999)
- Bloomquist v. State, 914 P.2d 812 (Wyo. 1996)
- Christy v. State, 731 P.2d 1204 (Wyo. 1987)
- Van Riper v. State, 999 P.2d 646 (Wyo. 2000)
- Swingholm v. State, 910 P.2d 1334 (Wyo. 1996)
- Clouse v. State, 776 P.2d 1011 (Wyo. 1989)
- Wayt v. State, 912 P.2d 1106 (Wyo. 1996)
- Johnson v. State, 790 P.2d 231 (Wyo. 1990)

- Smallwood v. State, 771 P.2d 798 (Wyo. 1989)
- Felix v. State ex rel. Wyoming Workers' Safety and Compensation Division, 986 P.2d 161 (Wyo. 1999)
- City of Cheyenne v. Huitt, 844 P.2d 1102 (Wyo. 1993)
- Wyrulec Co. v. Schutt, 866 P.2d 756 (Wyo. 1993)
- Billis v. State, 800 P.2d 401 (Wyo. 1990)
- In re West Highway Sanitary and Improvement District, 77 Wyo. 384, 317 P.2d 495 (1957)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/wyoming-supreme-court-of-wyoming/2003/bitiz-v-state-7b9y899k>