

SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania v. Stevenson Leon Rose

Commonwealth v. Rose · No. No. 26 WAP 2014 · Decided November 18, 2015

SUMMARY

This concurring opinion addresses whether applying an intervening legislative enactment to criminal conduct completed before the enactment's effective date violates the constitutional prohibition against ex post facto laws. The opinion emphasizes fair notice and culpability requirements under the Pennsylvania Crimes Code and distinguishes the Commonwealth's position concerning crimes that were not fully consummated when the legislation took effect. Chief Justice Saylor joins the majority subject to these differences.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Saylor; Todd, J.
JURISDICTION	Pennsylvania
DECIDED	November 18, 2015
DOCKET	No. 26 WAP 2014
DISPOSITION	other
PROCEDURAL POSTURE	The Commonwealth appealed from the Superior Court's order vacating the judgment of sentence and remanding the matter.
PRECEDENTIAL VALUE	Published concurring opinion; the concurrence's reasoning is nonbinding apart from any propositions adopted by the majority opinion.
PARTIES	Commonwealth of Pennsylvania v. Stevenson Leon Rose

TOPICS

ex post facto constitutional law criminal procedure appellate procedure

PRACTICE AREAS

constitutional law criminal law appellate law

QUESTIONS PRESENTED

1. Whether the ex post facto prohibition is implicated when legislation increases the adverse legal consequences of criminal conduct completed before the legislation's effective date.
2. Whether, for ex post facto purposes, the date of the offense generally is the date the relevant conduct occurred when the conduct was fully consummated before the intervening legislation took effect.
3. Whether analysis should focus on the broader culpability requirements of the Pennsylvania Crimes Code and the government's obligation to provide fair notice of criminal-law consequences.

HOLDINGS

1. As a general rule, the ex post facto prohibition is implicated when a legislative enactment increases the adverse legal consequences of criminal acts completed before the law's effective date.
2. Ex post facto analysis should address the culpability requirements of the Pennsylvania Crimes Code and the government's obligation to provide notice of the criminal-law consequences of conduct, rather than focusing narrowly on whether a crime is intentional or unintentional.

KEY QUOTATIONS

“where the relevant conduct is fully consummated before the implementation of a crime-creating or penalty-enhancing law, the date of the offense, for ex post facto purposes, generally should be the date the conduct occurred, and subsequently ensuing results should be treated as relating back to such date.” (slip op. at 1)

“the salient consideration is the requirement for the government to provide notice pertinent to conduct in the first instance.” (slip op. at 3)

FACTUAL BACKGROUND

The concurrence addresses the ex post facto implications of legislation applied to criminal conduct whose results or legally significant consequences occurred after the legislation's effective date. The opinion focuses on whether the date of the offense for ex post facto purposes is the date of the defendant's conduct when that conduct was fully consummated before the intervening law took effect.

PROCEDURAL HISTORY

The Court of Common Pleas of Allegheny County entered a judgment of sentence on December 7, 2010. The Superior Court entered an order on November 25, 2013, vacating the judgment of sentence and remanding. The Commonwealth appealed to the Supreme Court of Pennsylvania.

DISPOSITION

other

CASES CITED

- *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798)
- *Collins v. Youngblood*, 497 U.S. 37, 45, 110 S. Ct. 2715, 2721 (1990)

- Commonwealth v. Roebuck, 612 Pa. 642, 649, 32 A.3d 613, 618 (2011)
- Miller v. Florida, 482 U.S. 423, 430, 107 S. Ct. 2446, 2451 (1987)
- California Department of Corrections v. Morales, 514 U.S. 499, 506 n.3, 115 S. Ct. 1597, 1602 n.3 (1995)
- Carmell v. Texas, 529 U.S. 513, 531 n.21, 120 S. Ct. 1620, 1632 n.21 (2000)

OPINION

PER CURIAM.

[J-20-2015][M.O. – Todd, J.]

IN THE SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,,: No. 26 WAP 2014:

Appellant: Appeal from the Order of the Superior: Court entered November 25, 2013 at: No. 45 WDA 2011, vacating the

v.: Judgment of Sentence of the Court of: Common Pleas of Allegheny County: entered December 7, 2010 at No. CP-

STEVENSON LEON ROSE,,: 02-CR-0000810-2008 and remanding.:

Appellee: ARGUED: April 8, 2015

CONCURRING OPINION

MR. CHIEF JUSTICE SAYLOR DECIDED: NOVEMBER 18, 2015

I join the majority opinion, subject to a few modest differences.

Initially, I agree with the majority, at least as a general rule, that the ex post facto prohibition is implicated when a legislative enactment increases the adverse legal consequences of criminal acts completed before the law's effective date. In other words, where the relevant conduct is fully consummated before the implementation of a crime-creating or penalty-enhancing law, the date of the offense, for ex post facto purposes, generally should be the date the conduct occurred, and subsequently ensuing results should be treated as relating back to such date. Along these lines, and consistent with the majority opinion, I am unpersuaded by the Commonwealth's argument that the word "crime," as utilized in the seminal description of ex post facto laws in *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798), necessarily means a fully realized criminal offense, encompassing all elemental results.

My differences with the majority opinion are as follows. First, like Mr. Justice Eakin, I find it preferable to avoid the “disadvantage” and “substantial personal rights” rubric from which the Supreme Court of the United States appears to have distanced itself. See Concurring Opinion, slip op. at 1-2 (Eakin, J.) (citing *Collins v. Youngblood*, 497 U.S. 37, 45, 110 S. Ct. 2715, 2721 (1990)). That said, conceptually, I acknowledge that I have less difficulty, on my own part, with a measured use of these terms in the ex post facto arena.

Next, I differ with the majority’s depiction that the Commonwealth’s position is, in effect, that “the prohibition against ex post facto laws does not apply to unintentional crimes.” Majority Opinion, slip op. at 19. Indeed, nowhere in its brief does the Commonwealth contend that legislation subjecting a defendant who previously was convicted of and sentenced for any fully realized crime to enhanced penalties would not be proscribed. Rather, the Commonwealth’s discrete focus is upon crimes that are un consummated as of the effective date of intervening legislation.

I also find this focus upon intentionality or unintentionality to be somewhat distracting and, accordingly, I would address the Commonwealth’s contentions in terms of the broader requirements for culpability set forth in the Pennsylvania Crimes Code, 18 Pa.C.S. §302 (indicating, subject to one express exception, that “a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require”).¹ Within each of these categories, with regard to their conduct,

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The Crimes Code’s framework, in this regard, adopted from the Model Penal Code, served to “prun[e] from the lexicon a plethora of common-law culpability terms, leaving four core terms.” *Commonwealth v. Roebuck*, 612 Pa. 642, 649, 32 A.3d 613, 618 (2011).

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citizens have the ability to conform themselves to the requirements of the law upon fair notice. Moreover, as the majority otherwise acknowledges, such notice of the criminal-

law consequences of a failure to conform traditionally has been a recognized concern of ex post facto jurisprudence. See Majority Opinion, slip op. at 18-19 (citing, inter alia, *Miller v. Florida*, 482 U.S. 423, 430, 107 S. Ct. 2446, 2451 (1987), disapproved in part on other grounds *Calif. Dep't of Corrections v. Morales*, 514 U.S. 499, 506 n.3, 115 S. Ct. 1597, 1602 n.3 (1995)).

From my point of view, the notice concern directly pertains here, albeit that the Supreme Court has seen fit to invoke broader fairness principles where conceptual differences have arisen in discussing notice or reliance upon their own terms. Accord *id.* at 20-21 (citing *Carmell v. Texas*, 529 U.S. 513, 531 n.21, 120 S. Ct. 1620, 1632 n.21 (2000)). In the present setting, perhaps recourse to the broader principles aids in avoiding a digression into whether a defendant truly would or would not have engaged in some sort of a mental penalty calculus, when the salient consideration is the requirement for the government to provide notice pertinent to conduct in the first instance.

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