

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Richard Winning

No. 17-0921 (Mingo County S06-F-86) (W. Va. Oct. 12, 2018) · No. No. 17-0921 · Decided October 12, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the revocation of Richard Winning’s supervised release and his twenty-year sentence. The court rejected his arguments that the sentence was disproportionate, violated ex post facto protections, or was impermissible because of a prior probation-related disposition. The court held that West Virginia law authorized the supervised-release term and the post-revocation sentence, and that the circuit court awarded applicable credit for time served.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Paul T. Farrell, sitting by temporary assignment; Justice Evan H. Jenkins
JURISDICTION	West Virginia
DECIDED	October 12, 2018
DOCKET	No. 17-0921
DISPOSITION	affirmed
PROCEDURAL POSTURE	Richard Winning appealed the Circuit Court of Mingo County's order revoking his supervised release and imposing a twenty-year term of incarceration.
STANDARD OF REVIEW	Sentencing orders are reviewed under a deferential abuse-of-discretion standard unless the order violates statutory or constitutional commands.
PRECEDENTIAL VALUE	Published memorandum decision; no substantial question of law and no prejudicial error found under West Virginia Rule of Appellate Procedure 21.
PARTIES	Richard Winning v. State of West Virginia

TOPICS

sentencing

cruel and unusual punishment

ex post facto

probation

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

sentencing

supervised release

constitutional law

QUESTIONS PRESENTED

1. Whether the twenty-year post-revocation sentence was unconstitutionally disproportionate under the West Virginia and United States constitutional prohibitions against cruel and unusual punishment.
2. Whether imposing up to fifty years of supervised release violated ex post facto protections because the charging information did not allege that the offense occurred after enactment of the supervised-release statute.
3. Whether the circuit court was limited to the prior one-year sentence because Winning had allegedly been returned to probation rather than supervised release.
4. Whether Winning was entitled to credit against supervised release or the revocation sentence for time served on his original incarceration sentence or while awaiting resolution of the revocation proceeding.

HOLDINGS

1. The twenty-year sentence imposed after revocation of supervised release did not violate West Virginia's constitutional proportionality principle or the Eighth Amendment because it did not shock the conscience and Winning failed to establish disproportionality under the objective test.
2. Imposition of a fifty-year supervised-release term was not an impermissible ex post facto application because the version of West Virginia Code § 62-12-26 in effect when Winning committed the offense already authorized up to fifty years of supervised release.
3. The circuit court was authorized to revoke the fifty-year supervised-release term and impose up to the remaining supervised-release period, including the twenty-year sentence imposed here; Winning was not limited to the prior one-year sentence.
4. Winning was not entitled to credit against supervised release for time served on the original incarceration sentence, and the record showed that the circuit court awarded the credit for time served awaiting resolution of the revocation proceeding to which he was entitled.

KEY QUOTATIONS

“We find that petitioner’s post-revocation sentence does not violate our constitutional proportionality principle.” (p. 3)

“A post-revocation sanction simply is a continuation of the legal consequences of a defendant’s original crime.” (p. 4)

“Accordingly, it is clear that the circuit court had the authority to impose the sentence at issue, and we find no error.” (p. 6)

FACTUAL BACKGROUND

Winning pleaded guilty to sexual abuse by a custodian and was sentenced to ten to twenty years of incarceration plus fifty years of supervised release under West Virginia's sex-offender supervised-release statute. After completing his incarceration, he repeatedly violated supervised-release conditions, including violations that resulted in prior incarceration and reinstatement to supervised release. The violations underlying this appeal included assaulting his partner, breaking the partner's jaw and strangling him, possessing an unauthorized cellphone, refusing to provide its password, violating curfew, refusing sex-offender therapy, and failing to report an intimate relationship. Winning admitted the violations, and the circuit court imposed twenty years of incarceration.

PROCEDURAL HISTORY

Winning pleaded guilty in 2006 to one count of sexual abuse by a custodian and received a ten-to-twenty-year incarceration sentence followed by fifty years of supervised release. After multiple violations and prior revocation proceedings, the State filed another revocation petition in February 2017 alleging, among other violations, violence against Winning's partner, possession of an unauthorized cellphone, curfew violations, refusal to attend therapy, and failure to report an intimate relationship. Winning admitted the violations under an agreement limiting the State's recommendation to twenty years, and the circuit court imposed that sentence. The Supreme Court of Appeals affirmed the circuit court's order by memorandum decision.

DISPOSITION

affirmed

CASES CITED

- State v. Lucas, 201 W.Va. 271, 496 S.E.2d 221 (1997)
- State v. James, 227 W.Va. 407, 710 S.E.2d 98 (2011)
- State v. Vance, 164 W.Va. 216, 262 S.E.2d 423 (1980)
- State v. Adams, 211 W.Va. 231, 565 S.E.2d 353 (2002)
- State v. Hargus, 232 W.Va. 735, 753 S.E.2d 893 (2013)
- State, Department of Health & Human Resources v. Robert Morris N., 195 W.Va. 759, 466 S.E.2d 827 (1995)
- State v. Deel, 237 W.Va. 600, 788 S.E.2d 741 (2016)