

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Gonzalez v. State

838 So. 2d 1242 (Fla. Dist. Ct. App. 2003) · No. 1D01-3817 · Decided March 10, 2003

SUMMARY

The Florida First District Court of Appeal held that an indigent defendant is entitled to appointed counsel at a resentencing hearing following a determination that the original sentence was illegal. Because the denial of counsel was fundamental and inherently harmful, the court vacated the sentence and remanded for resentencing.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per Curiam; Booth; Wolf; Kahn
JURISDICTION	Florida
DECIDED	March 10, 2003
DOCKET	1D01-3817
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a new sentence imposed after resentencing pursuant to Heggs v. State.
STANDARD OF REVIEW	Fundamental error review for an unpreserved denial of the right to counsel; denial of counsel is subject to per se reversible-error treatment and is not harmless.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Isidro G. Gonzalez v. State of Florida

TOPICS

- right to counsel
- sentencing
- due process
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- sentencing
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether an indigent defendant is entitled to appointed counsel at a resentencing hearing after the trial court determines that the original sentence was illegal.
2. Whether the unpreserved denial of counsel at resentencing may be raised on appeal as fundamental error.
3. Whether the denial of counsel at resentencing is subject to harmless-error analysis.

HOLDINGS

1. Once a trial court determines that a defendant's sentence is illegal and resentencing is required, the defendant is entitled to the full panoply of due-process protections, including appointment of counsel for the resentencing hearing.
2. The denial of counsel at resentencing is fundamental error and may be raised on appeal even when the issue was not properly preserved.
3. The denial of counsel at resentencing is never harmless and constitutes per se reversible error.

KEY QUOTATIONS

“The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial.” (1243)

“Denial of counsel is always harmful, regardless of the strength of the admissible evidence, and can be properly categorized as per se reversible.” (1243)

FACTUAL BACKGROUND

Gonzalez was resentenced after the trial court determined that his sentence was illegal and that resentencing was required under Heggs. He was indigent and was not represented by appointed counsel at the resentencing hearing. The record contained no express waiver of his right to appointed counsel.

PROCEDURAL HISTORY

Gonzalez challenged his new sentence after resentencing under Heggs. Although the lack-of-counsel issue was not properly preserved, the appellate court held that the denial of counsel was fundamental error, vacated the sentence, and remanded for further resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate Gonzalez's sentence and remand for further resentencing with appointed counsel unless counsel is validly waived.

CASES CITED

- *Heggs v. State*, 759 So. 2d 620 (Fla. 2000)
- *Tyler v. State*, 710 So. 2d 645 (Fla. 4th DCA 1998)
- *May v. State*, 623 So. 2d 601, 603 (Fla. 2d DCA 1993)
- *State v. Scott*, 439 So. 2d 219, 220-21 (Fla. 1983)
- *McDonald v. State*, 679 So. 2d 1273 (Fla. 1st DCA 1996)
- *Harvey v. State*, 786 So. 2d 28 (Fla. 1st DCA 2001)
- *Holloway v. Arkansas*, 435 U.S. 475, 98 S. Ct. 1173, 1181, 55 L. Ed. 2d 426 (1978)
- *State v. DiGuilio*, 491 So. 2d 1129, 1137 (Fla. 1986)

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