

SUPREME COURT OF WASHINGTON

State v. Mendoza

165 Wash. 2d 913 (2009) · Decided April 16, 2009

SUMMARY

The Washington Supreme Court held that a prosecutor’s unsupported assertions of a defendant’s criminal history are not presentence reports under former RCW 9.94A.530(2). The State must prove prior convictions by a preponderance of the evidence, generally through certified records, unless the defendant affirmatively acknowledges the criminal history on the record. The court affirmed remand for resentencing and allowed the State an opportunity to present evidence of the defendants’ criminal histories.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Stephens, J.; Alexander, C.J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Madsen, J.; Owens, J.; Sanders, J.
JURISDICTION	Washington
DECIDED	April 16, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review of consolidated Court of Appeals decisions that affirmed the defendants' convictions but reversed their sentences and remanded for resentencing. The Washington Supreme Court granted review, consolidated the matters, affirmed the remand, and authorized the State to present evidence of the defendants' criminal histories at resentencing.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo. Challenges to criminal history and offender-score calculations may be considered for the first time on appeal to preserve the integrity and conformity of sentencing laws.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court opinion
PARTIES	State of Washington v. Frank C. Mendoza, David M. Henderson

TOPICS

- sentencing
- criminal procedure
- statutory interpretation
- appellate procedure
- preservation of error

PRACTICE AREAS

Criminal law

Sentencing

Statutory interpretation

Appellate procedure

QUESTIONS PRESENTED

1. Whether a prosecutor's statement asserting a defendant's criminal history constitutes a presentence report under former RCW 9.94A.500(1) and former RCW 9.94A.530(2), such that a defendant's failure to object acknowledges the criminal history.
2. Whether a defendant affirmatively acknowledges criminal history merely by recommending or agreeing to a sentence within the sentencing range calculated from the prosecutor's asserted criminal history.
3. Whether the State must prove the existence of prior convictions by a preponderance of the evidence unless the defendant affirmatively acknowledges the criminal history.
4. Whether, on remand where the defendant did not specifically object at sentencing, the State may introduce additional evidence of criminal history.

HOLDINGS

1. A prosecutor's statement of a defendant's criminal history is not a presentence report for purposes of former RCW 9.94A.500(1) and former RCW 9.94A.530(2).
2. A defendant's mere failure to object to a prosecutor's unsupported assertions of criminal history, and agreement with or recommendation of a sentencing range based on those assertions, do not constitute affirmative acknowledgment of the criminal history.
3. The State must establish the existence of prior convictions by a preponderance of the evidence, generally through competent evidence such as certified copies of judgments and sentences, unless the defendant affirmatively acknowledges the criminal history on the record.
4. When the defendant did not specifically object at the original sentencing and the State therefore lacked an opportunity to present proof, the State may present additional evidence of criminal history at resentencing.

KEY QUOTATIONS

“The mere failure to object to a prosecutor’s assertions of criminal history does not constitute such an acknowledgment.” (929)

“We hold that a prosecutor’s assertions of criminal history are not “presentence reports” within the meaning of former RCW 9.94A.530(2).” (930)

“We further hold that the State must provide evidence of a defendant’s criminal history, generally a certified copy of the judgment and sentence, unless the defendant affirmatively acknowledges the criminal history on the record.” (930)

FACTUAL BACKGROUND

Mendoza and Henderson were convicted in separate jury trials. Before sentencing, prosecutors filed statements asserting each defendant's prior criminal history and calculated offender scores and sentencing ranges, but provided no documentation verifying the prior convictions. Neither defendant objected to the asserted criminal history, but neither affirmatively acknowledged or stipulated to it; the sentencing courts nevertheless relied on the assertions in imposing sentence.

PROCEDURAL HISTORY

Mendoza was convicted by a jury of second degree robbery and unlawful imprisonment; Henderson was convicted by a jury of first degree trafficking in stolen property. At sentencing, the State asserted each defendant's criminal history and calculated an offender score, but supplied no documentary or other competent evidence, and neither defendant affirmatively acknowledged or stipulated to the asserted history. The Court of Appeals affirmed the convictions but remanded for resentencing. The Supreme Court affirmed and remanded, permitting the State to prove the criminal histories at resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for resentencing. The State may present evidence establishing Mendoza's and Henderson's criminal histories, and the sentencing courts may consider all relevant evidence regarding those histories under the applicable resentencing statutes.

CASES CITED

- State v. Mendoza, 139 Wn. App. 693, 162 P.3d 439 (2007)
- State v. Henderson, noted at 139 Wn. App. 1078
- State v. Ford, 137 Wn.2d 472, 973 P.2d 452 (1999)
- State v. Paine, 69 Wn. App. 873, 850 P.2d 1369 (1993)
- In re Personal Restraint of Cadwallader, 155 Wn.2d 867, 123 P.3d 456 (2005)
- State v. Lopez, 147 Wn.2d 515, 55 P.3d 609 (2002)
- United States v. Ibarra, 737 F.2d 825 (9th Cir. 1984)
- Burns v. City of Seattle, 161 Wn.2d 129, 164 P.3d 475 (2007)
- Densley v. Department of Retirement Systems, 162 Wn.2d 210, 173 P.3d 885 (2007)
- State v. George, 160 Wn.2d 727, 158 P.3d 1169 (2007)
- Department of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 43 P.3d 4 (2002)
- Rozner v. City of Bellevue, 116 Wn.2d 342, 804 P.2d 24 (1991)
- Seatrain Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572, 100 S. Ct. 800, 63 L. Ed. 2d 36 (1980)
- In re Personal Restraint of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002)
- State v. Ross, 152 Wn.2d 220, 95 P.3d 1225 (2004)

- State v. Bergstrom, 162 Wn.2d 87, 169 P.3d 816 (2007)
- State v. Ammons, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986)
- State v. Jacobs, 154 Wn.2d 596, 115 P.3d 281 (2005)
- State v. Weaver, 140 Wn. App. 349, 166 P.3d 761 (2007)
- State v. Fleming, 140 Wn. App. 132, 170 P.3d 50 (2007)
- State v. Nitsch, 100 Wn. App. 512, 997 P.2d 1000 (2000)
- In re Personal Restraint of Shale, 160 Wn.2d 489, 158 P.3d 588 (2007)
- State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (2005)