

SUPREME COURT OF WASHINGTON

State v. Abd-Rahmaan, 154 Wash. 2d 280

111 P.3d 1157 (2005) · No. No. 75398-9 · Decided May 12, 2005

SUMMARY

The Supreme Court of Washington held that Crawford v. Washington does not apply to hearsay offered in a sentence modification hearing because such a hearing is not a criminal prosecution. The court held that confrontation is governed by due process principles under Morrissey v. Brewer and requires a good-cause determination balancing the reliability of hearsay against the difficulty of procuring live witnesses. Because the trial court made no adequate record explaining the reliability of the hearsay or the reason for admitting it, the court reversed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	C. Johnson, J.; Alexander, C.J.; Madsen, J.; Sanders, J.; Chambers, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	May 12, 2005
DOCKET	No. 75398-9
DISPOSITION	reversed
PROCEDURAL POSTURE	Petitioner sought review of a Washington Court of Appeals decision upholding the admission of hearsay at a sentence modification hearing. The Washington Supreme Court granted limited review and reversed the Court of Appeals.
STANDARD OF REVIEW	The appellate court required a record sufficient to determine whether substantial evidence supported the sentence modification and whether good cause supported admission of hearsay; the opinion applied a balancing analysis weighing the reliability of the hearsay against the difficulty of procuring the live witness.
PRECEDENTIAL VALUE	Published, precedential en banc decision of the Washington Supreme Court
PARTIES	Khatib M. Abd-Rahmaan v. State of Washington

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QUESTIONS PRESENTED

1. Whether Crawford v. Washington's Sixth Amendment rule requiring prior cross-examination before admission of testimonial hearsay applies in a sentence modification hearing.
2. Whether hearsay may be admitted in a sentence modification hearing without a sufficient record establishing good cause, including the reliability of the hearsay and the difficulty or expense of procuring live witnesses.
3. Whether the trial court's record was sufficient to permit appellate review of its admission of the hearsay evidence and sentence modification.

HOLDINGS

1. Crawford v. Washington does not apply to sentence modification hearings because such hearings are post-conviction proceedings rather than criminal prosecutions, and the Sixth Amendment Confrontation Clause does not govern them.
2. Hearsay may be admitted in a sentence modification hearing when good cause exists, determined by considering the reliability of the hearsay in combination with the difficulty or expense of procuring the live witness.
3. The trial court's record was insufficient to establish good cause for admitting the hearsay evidence because it contained neither a showing that the evidence was demonstrably reliable nor any explanation of the difficulty or cost of procuring live witnesses.

KEY QUOTATIONS

"Since sentence modification hearings are not criminal prosecutions, the more flexible confrontation requirements under the due process clause of the Fourteenth Amendment still control." (1161)

"When admitting hearsay on a finding of good cause, trial courts are required to articulate the basis on which they are admitting the hearsay testimony by either oral or written findings in order to facilitate appellate review." (1162)

FACTUAL BACKGROUND

In 1999, Abd-Rahmaan pleaded guilty pursuant to an Alford plea to delivery of cocaine and was sentenced to 38 months in custody followed by 12 months of community placement. In 2003, the State sought to modify his sentence based on alleged violations of community-placement conditions, including failure to report to his community corrections officer. At the sentence modification hearing, the trial court admitted hearsay statements relayed by the officer from the Millionaires' Club and Federal Express, despite making no specific findings

concerning reliability or the difficulty or expense of producing the declarants. The court found a failure-to-report violation and ordered 60 days of confinement.

PROCEDURAL HISTORY

Abd-Rahmaan pleaded guilty pursuant to an Alford plea to delivery of cocaine and received a sentence including community placement. The State later sought sentence modification based on alleged community-placement violations. The trial court admitted hearsay testimony from Abd-Rahmaan's community corrections officer, found a failure-to-report violation, and imposed 60 days of confinement. The Court of Appeals affirmed, but the Washington Supreme Court granted limited review, held that Crawford did not apply, and concluded that the trial court record did not establish good cause for admitting the hearsay.

DISPOSITION

reversed

CASES CITED

- Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)
- Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)
- Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973)
- State v. Dahl, 139 Wash. 2d 678, 990 P.2d 396 (1999)
- Ohio v. Roberts, 448 U.S. 56, 66, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980)
- United States v. Aspinall, 389 F.3d 332 (2d Cir. 2004)
- United States v. Barraza, 318 F. Supp. 2d 1031 (S.D. Cal. 2004)
- State v. Nelson, 103 Wash. 2d 760, 765, 697 P.2d 579 (1985)
- North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)
- Ash v. Reilly, 354 F. Supp. 2d 1 (D.D.C. 2004)
- United States v. Daniel, 209 F.3d 1091 (9th Cir. 2000)
- United States v. Comito, 177 F.3d 1166 (9th Cir. 1999)
- State v. Abd-Rahmaan, 120 Wash. App. 284, 84 P.3d 944 (2004)

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