

SUPREME COURT OF WYOMING

Andrew William Deeds v. State of Wyoming

2014 WY 124 (Wyo. 2014) · No. S-13-0256 · Decided October 3, 2014

SUMMARY

The Wyoming Supreme Court affirmed Andrew Deeds's convictions and sentences for five counts of second-degree sexual abuse of a minor. The court held that the prosecutor did not breach the plea agreement or commit reversible misconduct by referring to the underlying conduct and intrusion evidence during sentencing. It concluded that allegations of jailhouse bragging were unreliable but did not establish a due process violation because the sentencing court did not appear to rely on them. The court remanded for clarification of how presentence confinement credit should be applied under Wyoming Rule of Criminal Procedure 32(c)(2)(F).

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Fox, Justice; Burke, C.J.; Hill, J.; Kite, J.; Davis, J.; Fox, J.
JURISDICTION	Wyoming
DECIDED	October 3, 2014
DOCKET	S-13-0256
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant appealed his convictions and sentences following guilty pleas to five counts of second-degree sexual abuse of a minor, asserting breach of the plea agreement, prosecutorial misconduct, due process violations, and noncompliance with the rule governing credit for presentence confinement.
STANDARD OF REVIEW	De novo review applied to interpretation and breach of the plea agreement and to interpretation of Wyoming Rule of Criminal Procedure 32(c)(2)(F). Unpreserved prosecutorial-misconduct and due-process claims were reviewed for plain error.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Andrew William Deeds v. The State of Wyoming

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QUESTIONS PRESENTED

1. Whether the prosecutor breached the plea agreement by referring at sentencing to elements of first-degree sexual abuse of a minor, the offense to which Deeds did not plead.
2. Whether the prosecutor committed prosecutorial misconduct and denied Deeds due process by referring at sentencing to the intrusion element of the no-longer-charged offense.
3. Whether the prosecutor committed prosecutorial misconduct and denied Deeds due process by presenting undocumented information that Deeds bragged about his conduct in jail for the first time during sentencing.
4. Whether the sentence sufficiently specified the application of presentence confinement credit under Wyoming Rule of Criminal Procedure 32(c)(2)(F).

HOLDINGS

1. The prosecutor did not breach the plea agreement by referring at sentencing to sexual intrusion and other facts relating to the originally charged offense because the agreement reduced the charges but imposed no limitation on either party's sentencing arguments.
2. The prosecutor's references to sexual intrusion at sentencing did not constitute plain error or deny due process because sentencing courts may consider broad information about the defendant and the crimes, and the intrusion evidence was contained in the presentence investigation materials and was not contested.
3. Although the undocumented bragging allegation was insufficiently reliable and its introduction without adequate notice constituted a manifest injustice, Deeds did not establish a due process violation because the record did not show that the district court relied on the allegation in imposing sentence.
4. The judgment and sentence did not comply with Wyoming Rule of Criminal Procedure 32(c)(2)(F) because it failed to specify whether the 721 days of presentence confinement credit applied to one or all of the sentenced offenses.

KEY QUOTATIONS

“The prosecutor must explicitly stand by the terms of any agreement; and if the State is unable to carry out the terms, the correct remedy is withdrawal of the plea.” (¶ 14)

“A sentencing decision cannot be based upon unreliable information, undocumented information, or inaccurate information.” (¶ 23)

“due process requires that the information used have some minimal indicium of reliability beyond mere allegation.” (¶ 30)

“State the extent to which credit for presentence confinement is to be given for each sentenced offense.” (¶ 40)

FACTUAL BACKGROUND

Deeds was charged with seven counts of first-degree sexual abuse of a minor and entered guilty pleas to five reduced counts of second-degree sexual abuse of a minor. The parties agreed that sentencing would remain open to argument. At sentencing, the prosecutor referred to evidence of sexual intrusion and to allegations that Deeds bragged about his conduct in jail; the intrusion evidence appeared in the presentence investigation materials, while the bragging allegation was first raised orally at the hearing. The district court imposed five consecutive twelve-to-eighteen-year sentences and awarded 721 days of presentence confinement credit without identifying the offense or offenses to which the credit applied.

PROCEDURAL HISTORY

Deeds was initially charged with seven counts of first-degree sexual abuse of a minor. Under an oral plea agreement, the charges were reduced to five counts of second-degree sexual abuse of a minor, with sentencing left open to argument. The district court imposed five consecutive sentences of twelve to eighteen years and awarded 721 days of presentence confinement credit without specifying how the credit applied to each offense. The Wyoming Supreme Court affirmed the challenged plea and sentencing rulings but remanded for clarification of the presentence confinement credit.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand to the District Court of Sheridan County to specify how the 721 days of presentence confinement credit are to be applied to each of Deeds's five sentenced offenses. The court affirmed on all other issues.

CASES CITED

- Noel v. State, 2014 WY 30, ¶ 17, 319 P.3d 134, 142
- Spencer v. State, 2005 WY 105, ¶ 12, 118 P.3d 978, 982-83
- Ford v. State, 2003 WY 65, ¶¶ 8, 11-12, 69 P.3d 407, 410-11
- Frederick v. State, 2007 WY 27, ¶ 13, 151 P.3d 1136, 1141
- Anderson v. State, 2014 WY 74, ¶ 40, 327 P.3d 89, 99
- Ortiz v. State, 2014 WY 60, ¶ 104, 326 P.3d 883, 903
- Schreibvogel v. State, 2010 WY 45, ¶ 19, 228 P.3d 874, 882
- Joreski v. State, 2012 WY 143, ¶ 13, 288 P.3d 413, 416
- Hackett v. State, 2010 WY 90, ¶ 14, 233 P.3d 988, 992
- Noller v. State, 2010 WY 30, ¶ 13, 226 P.3d 867, 871
- Magnus v. State, 2013 WY 13, ¶¶ 26, 28-29, 293 P.3d 459, 468-69

- Sandoval v. State, 2009 WY 121, ¶ 8, 217 P.3d 393, 395-96
- Doherty v. State, 2006 WY 39, ¶ 30, 131 P.3d 963, 972
- Mehring v. State, 860 P.2d 1101, 1117 (Wyo. 1993)
- Christy v. State, 731 P.2d 1204, 1207-08 (Wyo. 1987)
- Bitz v. State, 2003 WY 140, ¶ 23, 78 P.3d 257, 263
- Smallwood v. State, 771 P.2d 798, 802 (Wyo. 1989)
- Schaeffer v. State, 2012 WY 9, ¶ 53, 268 P.3d 1045, 1062
- Hubbard v. State, 2008 WY 12, ¶ 24, 175 P.3d 625, 630
- Manes v. State, 2004 WY 70, ¶ 13, 92 P.3d 293
- DeLoge v. State, 2002 WY 155, ¶ 13, 55 P.3d 1237, 1239
- Johnson v. State, 790 P.2d 231, 235 (Wyo. 1990)
- Peden v. State, 2006 WY 26, ¶¶ 4, 12-13, 129 P.3d 869, 870, 872-73
- Capellen v. State, 2007 WY 107, ¶ 16, 161 P.3d 1076, 1080
- Weidt v. State, 2013 WY 143, ¶ 21, 312 P.3d 1035, 1040
- Kelly v. Kilts, 2010 WY 151, ¶ 9, 243 P.3d 947, 950
- Busch v. Horton Automatics, Inc., 2008 WY 140, ¶ 13, 196 P.3d 787, 790
- Milladge v. State, 900 P.2d 1156, 1157 (Wyo. 1995)