

SUPREME COURT OF OHIO

State v. Whitfield

124 Ohio St. 3d 319, 2010-Ohio-2 (2010) · No. 2008-1669 · Decided January 5, 2010

SUMMARY

The Supreme Court of Ohio held that, when allied offenses of similar import result in multiple punishments, the state retains the right to elect which offense to pursue at sentencing on remand. The court of appeals must reverse the judgment of conviction and remand for a new sentencing hearing rather than direct the vacation of a particular allied-offense conviction. The determinations of guilt for the allied offenses remain intact, while the offenses are merged for sentencing purposes.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, J.; Moyer, C.J.; Lundberg Stratton, J.; O'Donnell, J.; Pfeifer, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	January 5, 2010
DOCKET	2008-1669
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State of Ohio sought discretionary review of the Cuyahoga County Court of Appeals' decision reversing the drug-possession conviction and remanding with instructions to vacate that conviction after finding that drug possession and drug trafficking were allied offenses of similar import.
STANDARD OF REVIEW	De novo review of the legal interpretation and application of R.C. 2941.25(A) and the proper remedy for reversible sentencing error involving allied offenses.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The State of Ohio v. Darnell Whitfield

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- double jeopardy
- statutory interpretation

PRACTICE AREAS

criminal law

criminal procedure

sentencing

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether, after an appellate court finds reversible error because a defendant was sentenced for allied offenses of similar import, the State retains the right to elect which allied offense to pursue at sentencing on remand.
2. Whether the appellate court must reverse the judgment of conviction and remand for a new sentencing hearing rather than order the trial court to vacate one specified allied-offense conviction.
3. Whether the determinations of guilt for allied offenses remain intact after the offenses are merged for sentencing.

HOLDINGS

1. The State retains the right to elect which allied offense to pursue at sentencing on remand after an appeal.
2. Upon finding reversible error in the imposition of multiple punishments for allied offenses, a court of appeals must reverse the judgment of conviction and remand for a new sentencing hearing at which the State must elect which allied offense it will pursue.
3. The determinations of guilt for allied offenses remain intact before and after merger for sentencing; the trial court should not vacate or dismiss the guilt determination for the nonselected offense.

KEY QUOTATIONS

“If, upon appeal, a court of appeals finds reversible error in the imposition of multiple punishments for allied offenses, the court must reverse the judgment of conviction and remand for a new sentencing hearing at which the state must elect which allied offense it will pursue against the defendant.” (¶ 25)

“Because R.C. 2941.25(A) protects a defendant only from being punished for allied offenses, the determination of the defendant’s guilt for committing allied offenses remains intact, both before and after the merger of allied offenses for sentencing.” (¶ 27)

FACTUAL BACKGROUND

Following a bench trial, Darnell Whitfield was found guilty of drug possession, drug trafficking, having a weapon under disability, carrying a concealed weapon, and three firearms specifications. The trial court imposed concurrent three-year sentences on the substantive counts and a consecutive one-year term for the firearms specifications. Although the court merged the firearms specifications, it did not merge the drug-possession and drug-trafficking offenses, which the parties agreed were allied offenses of similar import.

PROCEDURAL HISTORY

After a bench trial, Whitfield was found guilty of drug possession, drug trafficking, having a weapon under disability, carrying a concealed weapon, and firearms specifications. The trial court imposed sentences on both

the drug-possession and drug-trafficking offenses. The court of appeals found reversible plain error because the two offenses were allied offenses of similar import, but directed the trial court to vacate only the drug-possession conviction. The Supreme Court of Ohio reversed that portion of the appellate decision and remanded for a new sentencing hearing at which the State would elect which allied offense to pursue.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the court of appeals' directive to vacate the drug-possession conviction. Remand to the trial court for a new sentencing hearing at which the State must elect which allied offense to pursue. The trial court must merge the allied offenses for sentencing, impose an appropriate sentence for the selected offense, and leave the underlying guilt determinations intact.

CASES CITED

- State v. Cabrales, 118 Ohio St. 3d 54, 2008-Ohio-1625, 886 N.E.2d 181
- State v. Saxon, 109 Ohio St. 3d 176, 2006-Ohio-1245, 846 N.E.2d 824
- State v. Yarbrough, 104 Ohio St. 3d 1, 2004-Ohio-6087, 817 N.E.2d 845
- State v. Winn, 121 Ohio St. 3d 413, 2009-Ohio-1059, 905 N.E.2d 154
- State v. Childs, 88 Ohio St. 3d 558, 561, 728 N.E.2d 379 (2000)
- State v. Rance, 85 Ohio St. 3d 632, 710 N.E.2d 699 (1999)
- Maumee v. Geiger, 45 Ohio St. 2d 238, 344 N.E.2d 133 (1976)
- State v. Brown, 119 Ohio St. 3d 447, 2008-Ohio-4569, 895 N.E.2d 149
- Albernaz v. United States, 450 U.S. 333, 344 (1981)
- Ohio v. Johnson, 467 U.S. 493, 498 (1984)
- State v. Gapen, 104 Ohio St. 3d 358, 2004-Ohio-6548, 819 N.E.2d 1047
- State v. McGuire, 80 Ohio St. 3d 390, 686 N.E.2d 1112 (1997)
- State v. Fenwick, 91 Ohio St. 3d 1252, 745 N.E.2d 1046 (2001) (Cook, J., concurring)
- State v. Poindexter, 36 Ohio St. 3d 1, 520 N.E.2d 568 (1988)
- State v. Cash, 40 Ohio St. 3d 116, 532 N.E.2d 111 (1988)
- State ex rel. Watkins v. Fiorenzo, 71 Ohio St. 3d 259, 643 N.E.2d 521 (1994)
- State v. Botta, 27 Ohio St. 2d 196, 271 N.E.2d 776 (1971)
- Weaver v. State, 74 Ohio St. 53, 77 N.E. 273 (1906)
- Woodford v. State, 1 Ohio St. 427 (1853)
- State v. Palmer, 80 Ohio St. 3d 543, 687 N.E.2d 685 (1997)
- State v. Logan, 60 Ohio St. 2d 126, 397 N.E.2d 1345 (1979)
- State v. Weind, 50 Ohio St. 2d 224, 364 N.E.2d 224 (1977), vacated on other grounds, 438 U.S. 911 (1978)

- State v. Calhoun, 18 Ohio St. 3d 373, 481 N.E.2d 624 (1985)
- State v. Roberts, Auglaize App. No. 2-87-18, 1988 WL 68700 (Ohio Ct. App. June 23, 1988)
- Gates Mills v. Yomtovian, 8th Dist. No. 88942, 2007-Ohio-6303
- State v. Waters, 8th Dist. No. 85691, 2005-Ohio-5137
- State v. Garner, Trumbull App. No. 2002-T-0025, 2003-Ohio-5222
- State v. Collins, Cuyahoga App. No. 79064, 2001 WL 1243943 (Ohio Ct. App. Oct. 18, 2003)