

SUPREME COURT OF WASHINGTON

State v. Rafay

222 P.3d 86 (Wash. 2009) · No. No. 80865-1 · Decided December 10, 2009

SUMMARY

The Supreme Court of Washington held that article I, section 22 of the Washington Constitution guarantees a criminal defendant a right of self-representation on appeal. The court explained that the right is subject to reasonable limitations, including the good-cause standard under RAP 18.3(a)(1) and considerations of timeliness and orderly appellate administration. Because the Court of Appeals gave no reasons for denying Glen Sebastian Burns's motion to proceed pro se, the Supreme Court reversed and remanded.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Stephens, J.; Gerry L. Alexander, C.J.; Charles W. Johnson, J.; Barbara A. Madsen, J.; Richard B. Sanders, J.; Tom Chambers, J.; Susan Owens, J.; Mary E. Fairhurst, J.; James M. Johnson, J.
JURISDICTION	Washington
DECIDED	December 10, 2009
DOCKET	No. 80865-1
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Burns sought discretionary review of a Washington Court of Appeals order denying his motion to withdraw appointed appellate counsel and proceed pro se. The Washington Supreme Court granted review, reversed the denial, and remanded for further proceedings.
STANDARD OF REVIEW	A discretionary appellate ruling is reviewed for abuse of discretion. An abuse occurs when the decision is manifestly unreasonable, rests on untenable grounds or reasons, applies the wrong legal standard, or is based on an erroneous view of the law.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Atif Rafay, Glen Sebastian Burns v. State of Washington

TOPICS

appellate procedure

right to counsel

criminal procedure

constitutional law

PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether article I, section 22 of the Washington Constitution guarantees a criminal defendant a right to represent himself on appeal.
2. Whether the right of self-representation on appeal is subject to limitations, including the good-cause and timeliness requirements governing withdrawal of appointed appellate counsel under RAP 18.3(a)(1).
3. Whether the Court of Appeals properly denied Burns's motion when its order gave no explanation of the legal standard or factual basis applied.

HOLDINGS

1. Article I, section 22 of the Washington Constitution guarantees a criminal defendant a right of self-representation on appeal.
2. The right of self-representation on appeal is not self-executing or absolute and may be subject to reasonable limitations concerning waiver of counsel, good cause, timing, and orderly appellate administration.
3. The Court of Appeals' unexplained denial could not be sustained because the record did not disclose whether it applied the correct legal standard or relied on facts supported by the record.

KEY QUOTATIONS

“We agree and hold that article I, section 22 of the Washington State Constitution guarantees a right of self-representation on appeal.” (87)

“As with the right of self-representation at trial, the right of self-representation on appeal is neither self-executing nor absolute.” (90)

“But where a defendant presents good cause not outweighed by countervailing concerns, courts must proceed in a manner that respects the defendant's exercise of the right to self-representation.” (91)

“Because the Court of Appeals was completely silent as to the reasons for denying Burns's motion, we cannot say whether it rested its decision on facts supported by the record.” (91)

FACTUAL BACKGROUND

Glen Sebastian Burns and Atif Rafay were charged with murdering Rafay's parents and sister. Both were convicted of three counts of aggravated first-degree murder and sentenced to life in prison. During Burns's appeal, he moved to proceed pro se after appointed appellate counsel had filed the opening brief, submitting a declaration acknowledging the consequences of self-representation. The Court of Appeals denied the motion in a one-page order that gave no reasons.

PROCEDURAL HISTORY

Burns and Rafay were convicted of three counts of aggravated first-degree murder in 2004 and sentenced to life imprisonment. During Burns's appeal, after appellate counsel had filed the opening brief, Burns moved under RAP 18.3(a)(1) to represent himself and have counsel withdraw. A Court of Appeals commissioner initially granted the motion, but the Court of Appeals panel later denied it without explaining its reasoning. The Washington Supreme Court granted discretionary review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals order denying Burns's motion to proceed pro se and remand to the Court of Appeals for further proceedings consistent with the opinion, including consideration of the constitutional right and the applicable RAP 18.3(a)(1) good-cause and timing standards.

CASES CITED

- *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)
- *Martinez v. Court of Appeal*, 528 U.S. 152, 120 S. Ct. 684, 145 L. Ed. 2d 597 (2000)
- *State v. Gunwall*, 106 Wash. 2d 54, 720 P.2d 808 (1986)
- *Illinois v. Allen*, 397 U.S. 337, 350-51, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970)
- *State v. Silva*, 107 Wash. App. 605, 27 P.3d 663 (2001)
- *State v. Mode*, 55 Wash. 2d 706, 349 P.2d 727 (1960)
- *State v. Sweet*, 90 Wash. 2d 282, 581 P.2d 579 (1978)
- *State v. Tomal*, 133 Wash. 2d 985, 948 P.2d 833 (1997)
- *State v. Robinson*, 153 Wash. 2d 689, 107 P.3d 90 (2005)
- *State v. DeWeese*, 117 Wash. 2d 369, 816 P.2d 1 (1991)
- *State v. Kolocotronis*, 73 Wash. 2d 92, 436 P.2d 774 (1968)
- *State v. Fritz*, 21 Wash. App. 354, 585 P.2d 173 (1978)
- *State v. Breedlove*, 79 Wash. App. 101, 900 P.2d 586 (1995)
- *State v. Hairston*, 133 Wash. 2d 534, 946 P.2d 397 (1997)
- *T.S. v. Boy Scouts of America*, 157 Wash. 2d 416, 138 P.3d 1053 (2006)
- *State v. Dahl*, 139 Wash. 2d 678, 990 P.2d 396 (1999)
- *State v. Stenson*, 132 Wash. 2d 668, 940 P.2d 1239 (1997)
- *State v. Bebb*, 108 Wash. 2d 515, 740 P.2d 829 (1987)
- *State v. McDonald*, 143 Wash. 2d 506, 22 P.3d 791 (2001)
- *Roberson v. Perez*, 156 Wash. 2d 33, 123 P.3d 844 (2005)

- Wash. State Physicians Insurance Exchange & Association v. Fisons Corp., 122 Wash. 2d 299, 858 P.2d 1054 (1993)
- State v. Rohrich, 149 Wash. 2d 647, 71 P.3d 638 (2003)
- State v. Rundquist, 79 Wash. App. 786, 905 P.2d 922 (1995)
- State v. Hampton, 107 Wash. 2d 403, 728 P.2d 1049 (1986)

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