

WASHINGTON SUPREME COURT

In re the Personal Restraint of Moi

184 Wash. 2d 575 (2015) · No. 89706-9 · Decided October 29, 2015

SUMMARY

The Washington Supreme Court granted Mathew Moi’s personal restraint petition, holding that double jeopardy and collateral estoppel barred the State from retrying him for murder where he had previously been acquitted of unlawfully possessing the firearm the State alleged was used in the murder. The court rejected the State’s arguments that applying collateral estoppel would be unjust because Moi sought severance of the charges or presented unexpected testimony. The court remanded for further proceedings consistent with its opinion.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	González, J.; Madsen, C.J.; Johnson, J.; Owens, J.; Fairhurst, J.; Stephens, J.; Wiggins, J.; Gordon McCloud, J.; Yu, J.
JURISDICTION	Washington
DECIDED	October 29, 2015
DOCKET	89706-9
DISPOSITION	remanded
PROCEDURAL POSTURE	Mathew Moi sought personal restraint relief from his murder conviction, arguing that the Double Jeopardy Clause and collateral estoppel barred his retrial for murder after he had been acquitted of unlawfully possessing the gun the State alleged was used in the murder. The Washington Supreme Court granted review of the personal restraint petition.
STANDARD OF REVIEW	Double jeopardy challenges are generally reviewed de novo. A petitioner asserting collateral estoppel bears the burden of proof, and a personal restraint petitioner alleging constitutional error must show actual and substantial prejudice, which is satisfied by demonstrating a double jeopardy violation.
PRECEDENTIAL VALUE	published precedential Washington Supreme Court opinion
PARTIES	Mathew Moi v. State of Washington

TOPICS

double jeopardy

state post-conviction relief

post-conviction relief

criminal procedure

constitutional law

PRACTICE AREAS

criminal procedure

constitutional law

post-conviction relief

QUESTIONS PRESENTED

1. Whether collateral estoppel incorporated into the Double Jeopardy Clause barred the State from retrying Moi for murder when he had previously been acquitted of unlawfully possessing the firearm that the State alleged was used to commit the murder.
2. Whether applying collateral estoppel would work an injustice because Moi moved to sever the charges, agreed to a bench trial on the firearm charge, or presented different exculpatory testimony at the first trial.

HOLDINGS

1. Collateral estoppel barred the State from retrying Moi for murder because the prior acquittal necessarily and finally resolved against the State the identical ultimate factual issue that Moi possessed the gun used to kill McGowan, and the State conceded the first three elements of Washington's collateral-estoppel test.
2. Applying collateral estoppel did not work an injustice. Moi's request for severance and agreement to a bench trial did not waive or forfeit his double jeopardy protection, and his testimony identifying another possible shooter did not deprive the State of a full and fair opportunity to litigate the firearm-possession issue.

KEY QUOTATIONS

“Under the collateral estoppel doctrine, “when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit,” including a criminal prosecution.” (at 579)

“Given this full trial; given the fact that in essence, the State was able to treat its first unsuccessful 2006 prosecution as a “dry run” for its successful 2007 prosecution, cf. Ashe, 397 U.S. at 447; and given the State’s concession that the same issue of ultimate fact was decided in both trials, we find application of collateral estoppel does not work an injustice.” (at 584)

“A factfinder’s determination that the government failed to carry its burden on an issue in the first proceeding has preclusive effect in a subsequent proceeding raising that same issue, provided that both proceedings are governed by the same standard of proof.” (at 586)

FACTUAL BACKGROUND

Keith McGowan was shot and killed, and the State charged Moi with murder after evidence placed him at the scene and suggested he had told an ex-girlfriend he had killed someone. The State later determined that

McGowan was killed with a gun recovered from a storm drain and added an unlawful firearm possession charge because Moi had prior juvenile robbery convictions. At a combined proceeding, the jury deadlocked on murder while the judge acquitted Moi of possessing the firearm. The State then retried Moi for murder using the theory that he had shot McGowan with the same gun, and a second jury convicted him.

PROCEDURAL HISTORY

Moi was first tried for murder and unlawful possession of a firearm based on the same underlying facts. The jury deadlocked on murder, while the trial judge acquitted him of unlawful firearm possession after considering the evidence presented at the joint proceedings. The State retried Moi for murder and obtained a conviction in 2007; his direct appeal did not raise double jeopardy. The Supreme Court granted review of his timely personal restraint petition and granted relief.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The personal restraint petition was granted, and the matter was remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- State v. Moi, 165 Wn. App. 1006
- In re Pers. Restraint of Moi, 182 Wn.2d 1015, 344 P.3d 688 (2015)
- In re Pers. Restraint of Orange, 152 Wn.2d 795, 804, 815, 822, 100 P.3d 291 (2004)
- State v. Gocken, 127 Wn.2d 95, 100, 896 P.2d 1267 (1995)
- State v. Freeman, 153 Wn.2d 765, 770, 108 P.3d 753 (2005)
- State v. Johnston, 100 Wn. App. 126, 137, 996 P.2d 629 (2000)
- State v. Williams, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997)
- McDaniels v. Carlson, 108 Wn.2d 299, 303, 738 P.2d 254 (1987)
- Dowling v. United States, 493 U.S. 342, 347, 110 S. Ct. 668, 107 L. Ed. 2d 708 (1990)
- Ashe v. Swenson, 397 U.S. 436, 437-47, 90 S. Ct. 1189, 25 L. Ed. 2d 469 (1970)
- State v. Cleveland, 58 Wn. App. 634, 639, 794 P.2d 546 (1990)
- Jeffers v. United States, 432 U.S. 137, 139, 144, 153-54, 97 S. Ct. 2207, 53 L. Ed. 2d 168 (1977)
- Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)
- Ohio v. Johnson, 467 U.S. 493, 494-95, 502, 104 S. Ct. 2536, 81 L. Ed. 2d 425 (1984)
- Arizona v. Washington, 434 U.S. 497, 509, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978)
- State v. Gunderson, 181 Wn.2d 916, 923, 337 P.3d 1090 (2014)
- State v. Smith, 106 Wn.2d 772, 779-80, 725 P.2d 951 (1986)
- Standefer v. United States, 447 U.S. 10, 11-12, 22, 25, 100 S. Ct. 1999, 64 L. Ed. 2d 689 (1980)

- *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 325, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)
- *Roth v. United States*, 354 U.S. 476, 492 n.30, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957)
- *Thompson v. Department of Licensing*, 138 Wn.2d 783, 795-96, 982 P.2d 601 (1999)
- *In re Marriage of Murphy*, 90 Wn. App. 488, 498, 952 P.2d 624 (1998)
- *Commonwealth v. States*, 595 Pa. 453, 456-60, 938 A.2d 1016 (2007)
- *Wilkinson v. Gingrich*, 806 F.3d 511, 513-20 (9th Cir. 2015)
- *State v. Tili*, 148 Wn.2d 350, 361, 60 P.3d 1192 (2003)
- *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983)
- *Charles v. Hickman*, 228 F.3d 981, 985-86 (9th Cir. 2000)
- *Crace v. Herzog*, 798 F.3d 840, 843, 846 (9th Cir. 2015)
- *In re Personal Restraint of Crace*, 174 Wn.2d 835, 847, 280 P.3d 1102 (2012)
- *State v. Grier*, 171 Wn.2d 17, 246 P.3d 1260 (2011)