

SUPREME COURT OF WASHINGTON

State v. Surge

160 Wash. 2d 65 (2007) · Decided April 19, 2007

SUMMARY

The Washington Supreme Court held that RCW 43.43.754, which requires certain convicted individuals to provide biological samples for DNA identification, does not violate article I, section 7 of the Washington Constitution or the Fourth Amendment. The court concluded that incarcerated convicted felons have minimal privacy interests in their identities and that DNA collection for identification purposes is analogous to fingerprinting. The court affirmed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	C. Johnson, J.; Alexander, C.J.; Madsen, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	April 19, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated petition for review of the Court of Appeals' affirmance of sentencing orders requiring convicted defendants to submit biological samples for DNA identification under RCW 43.43.754.
STANDARD OF REVIEW	Independent de novo review of the constitutional validity of RCW 43.43.754.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Antoine Surge, Christopher Yarbrough, Shabray McMurry, James McClinton, Ricardo Guzman-Gil, Allen Bowman v. State of Washington

TOPICS

- fourth amendment
- search and seizure
- constitutional law
- criminal procedure
- statutory interpretation

PRACTICE AREAS

- constitutional law
- criminal procedure
- search and seizure
- DNA evidence
- statutory interpretation

QUESTIONS PRESENTED

1. Whether compulsory DNA sampling of convicted persons under RCW 43.43.754 disturbs a private affair protected by article I, section 7 of the Washington Constitution.
2. Whether compulsory DNA sampling of convicted persons under RCW 43.43.754 constitutes an unreasonable search prohibited by the Fourth Amendment.
3. Whether intervening United States Supreme Court decisions undermined the Washington Supreme Court's prior Fourth Amendment analysis in *State v. Olivas*.

HOLDINGS

1. Compelled collection of DNA from convicted felons for identification purposes does not disturb a private affair protected by article I, section 7 of the Washington Constitution.
2. Compelled collection of DNA from persons convicted of felonies under RCW 43.43.754 does not violate the Fourth Amendment.

KEY QUOTATIONS

“We affirm the Court of Appeals and hold the compelled collection of DNA from convicted felons does not invade a recognized private affair under the state constitution, nor is it prohibited under the Fourth Amendment.” (at 65)

“Because no private affair is implicated, we need not reach the second step of the inquiry — whether authority of law exists for the search.” (at 72)

“We find RCW 43.43.754 does not violate article I, section 7 or the Fourth Amendment. We affirm the Court of Appeals.” (at 82)

FACTUAL BACKGROUND

Six petitioners were convicted of felonies or related offenses, including murder, robbery, burglary, bail jumping, cocaine possession, child rape, assault, and possession of stolen property. Each was required under RCW 43.43.754 to provide a biological sample for DNA identification analysis and inclusion in the State's DNA database. The statute limited the use of the DNA information to identification-related purposes, including criminal investigations, identification of human remains or missing persons, and operation of the DNA system.

PROCEDURAL HISTORY

Each petitioner was convicted of one or more offenses and was ordered at sentencing to provide a biological sample for DNA identification and inclusion in the State's DNA database. The Court of Appeals affirmed, concluding that the collection constituted a special need for which a warrant was not required and alternatively that the statute was constitutional under a minimally intrusive search analysis. The Washington Supreme Court granted review and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Carter, 151 Wn.2d 118, 85 P.3d 887 (2004)
- State v. McKinney, 148 Wn.2d 20, 60 P.3d 46 (2002)
- State v. Jackson, 150 Wn.2d 251, 76 P.3d 217 (2003)
- State v. Young, 123 Wn.2d 173, 867 P.2d 593 (1994)
- State v. Myrick, 102 Wn.2d 506, 688 P.2d 151 (1984)
- State v. Simpson, 95 Wn.2d 170, 622 P.2d 1199 (1980)
- State v. Cheatam, 150 Wn.2d 626, 81 P.3d 830 (2003)
- State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)
- State ex rel. Gallwey v. Grimm, 146 Wn.2d 445, 48 P.3d 274 (2002)
- Kuehn v. Renton School District No. 403, 103 Wn.2d 594, 694 P.2d 1078 (1985)
- City of Seattle v. Mesiani, 110 Wn.2d 454, 755 P.2d 775 (1988)
- City of Seattle v. McCready, 123 Wn.2d 260, 868 P.2d 134 (1994)
- State v. Tourtillott, 289 Or. 845, 618 P.2d 423 (1980)
- State v. Olivas, 122 Wn.2d 73, 856 P.2d 1076 (1993)
- City of Indianapolis v. Edmond, 531 U.S. 32, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000)
- Ferguson v. City of Charleston, 532 U.S. 67, 121 S. Ct. 1281, 149 L. Ed. 2d 205 (2001)
- United States v. Kincade, 345 F.3d 1095 (9th Cir. 2003)
- United States v. Kincade, 379 F.3d 813 (9th Cir. 2004), cert. denied, 544 U.S. 924 (2005)
- Padgett v. Donald, 401 F.3d 1273, 1278 (11th Cir.), cert. denied, 546 U.S. 820 (2005)
- In re Juveniles A, B, C, D, E, 121 Wn.2d 80, 847 P.2d 455 (1993)
- O'Hartigan v. Department of Personnel, 118 Wn.2d 111, 821 P.2d 44 (1991)
- Whalen v. Roe, 429 U.S. 589, 599-600, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977)
- Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973)
- North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)