

SUPREME COURT OF KANSAS

State v. Garcia, 274 Kan. 708

56 P.3d 797 (2002) · No. No. 87,691 · Decided October 25, 2002

SUMMARY

The Supreme Court of Kansas considered whether *Apprendi v. New Jersey* required a jury finding beyond a reasonable doubt before a gang-related sentencing provision could support imprisonment rather than probation. The court held that *Apprendi* did not apply because the prison terms did not exceed the statutory maximum. However, it vacated Garcia’s sentences and remanded for resentencing because the district court failed to make adequate on-the-record findings required by the gang-related sentencing statute.

CASE DETAILS

|                       |                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kansas                                                                                                                                                              |
| WRITING FOR THE COURT | Six, J.; Larson, S.J., assigned                                                                                                                                                      |
| JURISDICTION          | Kansas                                                                                                                                                                               |
| DECIDED               | October 25, 2002                                                                                                                                                                     |
| DOCKET                | No. 87,691                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                |
| PROCEDURAL POSTURE    | Garcia appealed his sentences imposed after no contest pleas to aggravated battery and incitement to riot. The Kansas Supreme Court accepted the case by transfer on its own motion. |
| STANDARD OF REVIEW    | Interpretation of the Kansas Sentencing Guidelines Act is a question of law subject to unlimited or plenary review.                                                                  |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                       |
| PARTIES               | Jonathan DeWayne Garcia v. State of Kansas                                                                                                                                           |

TOPICS

- sentencing
- sentencing guidelines
- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- criminal law
- sentencing
- constitutional law
- appellate procedure
- statutory interpretation

## QUESTIONS PRESENTED

1. Whether *Apprendi v. New Jersey* required the gang-related facts under K.S.A. 2001 Supp. 21-4704a(k) to be submitted to a jury and proved beyond a reasonable doubt before a prison term could be imposed instead of probation.
2. Whether the district court was required to make specific findings on the record supporting application of K.S.A. 2001 Supp. 21-4704a(k).
3. Whether sufficient evidence supported the district court's conclusion that Garcia's crimes were gang related.

## HOLDINGS

1. *Apprendi* did not apply because imposition of a prison term under K.S.A. 2001 Supp. 21-4704a(k), when the guidelines otherwise called for presumptive probation, did not increase the punishment beyond the statutory maximum.
2. The district court was required to make findings on the record establishing the statutory gang-related criteria before imposing a prison term under K.S.A. 2001 Supp. 21-4704a(k). Because it failed to do so, Garcia's sentences had to be vacated and the case remanded for resentencing.

## KEY QUOTATIONS

*“Following the reasoning of Carr, Dean, and Tisdale, the prison terms imposed here do not exceed the statutory maximum punishment for Garcia's crimes, and Apprendi does not apply.” (712)*

*“A district court, in determining whether the provisions of K.S.A. 2001 Supp. 21-4704a(k) apply, has many things to consider: (1) whether the crime was committed to benefit the gang, was committed at the direction of the gang, or was committed in association with the gang; (2) whether the defendant had the specific intent to promote, further, or assist in crimes by gang members; and (3) whether the gang involved qualifies as a “criminal street gang” based on the makeup of its members and their activities.” (716-717)*

## FACTUAL BACKGROUND

Garcia was arrested with Charles Sanchez in connection with the beating of four men in Dodge City. He pleaded no contest to aggravated battery and incitement to riot after the State dismissed other charges. His criminal-history score and offense levels placed him in sentencing boxes calling for presumptive probation, but the district court imposed consecutive prison terms based on the alleged gang-related nature of the crimes. The district court did not make specific findings that the offenses satisfied the statutory gang-related criteria.

## PROCEDURAL HISTORY

Garcia was charged with multiple offenses arising from the beating of four men and, after a preliminary hearing, pleaded no contest to one count of aggravated battery and one count of incitement to riot in exchange for dismissal of the remaining charges. The district court imposed consecutive prison terms of 16 months and 8 months, respectively, although the sentencing guidelines otherwise called for presumptive probation. The Kansas Supreme Court affirmed the ruling that *Apprendi* did not apply, vacated the sentences for inadequate findings under the gang-related sentencing statute, and remanded for resentencing.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Vacate the prison sentences and remand for resentencing. The district court may make the required findings under K.S.A. 2001 Supp. 21-4704a(k) and reimpose the same sentences if appropriate.

## CASES CITED

- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- State v. Crow, 266 Kan. 690, 974 P.2d 100 (1999)
- State v. Gould, 271 Kan. 394, 23 P.3d 801 (2001)
- State v. Carr, 274 Kan. 442, 53 P.3d 843 (2002)
- State v. Dean, 273 Kan. 929, 46 P.3d 1130 (2002)
- State v. Tisdale, 30 Kan. App. 2d 524, 43 P.3d 835 (2002)
- State v. Beasley, No. 87,786 (Kan. Oct. 25, 2002)
- State v. Whitesell, 270 Kan. 259, 13 P.3d 887 (2000)
- State v. Mares, 20 Kan. App. 2d 971, 893 P.2d 296 (1995)
- State v. Clark, 21 Kan. App. 2d 697, 907 P.2d 898 (1995)
- State v. Colbert, 24 Kan. App. 2d 756, 953 P.2d 1058 (1998)
- State v. Bost, 21 Kan. App. 2d 560, 903 P.2d 160 (1995)
- State v. Salcido-Corral, 262 Kan. 392, 940 P.2d 11 (1997)
- State v. Peterson, 25 Kan. App. 2d 354, 964 P.2d 695 (1998)