

SUPREME COURT OF THE STATE OF IDAHO

State of Idaho v. David Allen Dalrymple

2007 Opinion No. 28 (Supreme Court of the State of Idaho 2007) · No. 33447 · Decided February 21, 2007

SUMMARY

The Idaho Supreme Court affirmed David Allen Dalrymple’s convictions and sentences for lewd conduct with a child, sexual abuse of a child, and second-degree kidnapping. The court held that Dalrymple knowingly, intelligently, and voluntarily waived his right to counsel, and that the district court did not violate his compulsory-process right or make prejudicial comments. The court also upheld the sentences as within statutory limits and not an abuse of discretion.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Idaho                                                                                                                                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Jones, Justice; Chief Justice Schroeder; Justice Trout; Justice Eismann; Justice Burdick                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Idaho                                                                                                                                                                                                                                                                                                                                                                           |
| DECIDED               | February 21, 2007                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | 33447                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The Idaho Supreme Court reviewed the Court of Appeals' decision vacating Dalrymple's felony convictions for failure to provide contemporaneous Faretta warnings. The State petitioned for review, and the Supreme Court considered the issues as it would on direct appeal from the district court.                                                                             |
| STANDARD OF REVIEW    | The validity of the waiver of counsel was reviewed under the totality of the circumstances. The decision to reopen a case was reviewed for abuse of discretion. Sentences were reviewed for abuse of discretion, with independent review of the record when excessive harshness was alleged. Trial-court comments were reviewed for whether they constituted prejudicial error. |
| PRECEDENTIAL VALUE    | Published Idaho Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                            |
| PARTIES               | David Allen Dalrymple v. State of Idaho                                                                                                                                                                                                                                                                                                                                         |

TOPICS

right to counsel

sixth amendment

criminal procedure

evidence

sentencing

## PRACTICE AREAS

Criminal law

Criminal procedure

Appellate practice

Evidence

Sentencing

## QUESTIONS PRESENTED

1. Whether Dalrymple knowingly, intelligently, and voluntarily waived his Sixth Amendment right to counsel when he discharged counsel after the evidentiary phase of trial.
2. Whether the district court impermissibly coerced Dalrymple by conditioning presentation of his hypnosis defense on discharging counsel and proceeding pro se.
3. Whether refusal to allow Dalrymple to recall K.B. violated his Sixth Amendment right to compulsory process.
4. Whether the district court made prejudicial comments on Dalrymple's testimony in the presence of the jury.
5. Whether Dalrymple's sentences were excessive or constituted an abuse of discretion.

## HOLDINGS

1. Farettas warnings need not be given contemporaneously with a defendant's waiver of counsel; the validity of the waiver is determined from the totality of the circumstances, so long as the record establishes that the defendant understood the risks and consequences of self-representation.
2. The district court did not impermissibly coerce Dalrymple by permitting him either to proceed to closing argument without presenting the proposed defense or to discharge counsel and reopen the case to present it pro se.
3. Refusing to allow Dalrymple to recall K.B. did not violate his Sixth Amendment right to compulsory process because he failed to make a plausible showing that her proposed testimony would be material and favorable to his defense.
4. The district court did not make prejudicial comments by requiring Dalrymple to establish qualifications before offering expert hypnosis testimony and by limiting him to relevant lay testimony.
5. The sentences were not excessive and did not constitute an abuse of discretion because they were within the statutory limits and were reasonable in light of the offenses, Dalrymple's character, public protection, and applicable sentencing goals.

## KEY QUOTATIONS

*“Faretta warnings, however, do not need to be given contemporaneously to the defendant’s waiver.” (at 4)*

*“Therefore, the district court at a minimum must be satisfied that Dalrymple understood the inherent risks involved in waiving the right to counsel.” (at 4)*

*“Compulsory process only applies if the defendant can “at least make some plausible showing of how [the witnesses’] testimony would have been both material and favorable to his defense.”” (at 6)*

## FACTUAL BACKGROUND

Dalrymple was convicted of two counts of lewd conduct with a child under sixteen, one count of sexual abuse of a child under sixteen, and two counts of second-degree kidnapping. Before trial, he expressed dissatisfaction with appointed counsel and received extensive warnings about the advantages of counsel and the dangers of self-representation, after which he initially chose to retain counsel. After the evidentiary phase, he sought to present a hypnosis-based defense that counsel believed lacked a proper foundation; the court allowed him to discharge counsel and proceed pro se with standby counsel. The court limited his hypnosis testimony, refused to recall the child witness, and imposed sentences within the statutory limits.

## PROCEDURAL HISTORY

Dalrymple was convicted in the Ada County District Court of felony lewd conduct with a child, sexual abuse of a child, and second-degree kidnapping, among other offenses. The Court of Appeals vacated the convictions, concluding that the district court erred by not giving Faretta warnings contemporaneously with Dalrymple's waiver of counsel. The Idaho Supreme Court granted the State's petition for review and affirmed the judgment of conviction and sentences.

## DISPOSITION

affirmed

## CASES CITED

- State v. Cope, 142 Idaho 492, 495, 129 P.3d 1241, 1244 (2006)
- Garza v. State, 139 Idaho 533, 535, 82 P.3d 445, 447 (2003)
- Faretta v. California, 422 U.S. 806, 819, 834-35 (1975)
- State v. Lovelace, 140 Idaho 53, 64, 90 P.3d 278, 289 (2003)
- State v. Hunnel, 125 Idaho 623, 625-26, 873 P.2d 877, 879-80 (1994)
- State v. Lindsay, 124 Idaho 825, 828, 864 P.2d 663, 666 (Ct. App. 1993)
- State v. Cutler, 94 Idaho 295, 298, 486 P.2d 1008, 1011 (1971)
- State v. Perry, 139 Idaho 520, 523, 81 P.3d 1230, 1233 (2003)
- United States v. Scheffer, 523 U.S. 303, 308 (1998)
- Washington v. Texas, 388 U.S. 14, 19 (1967)
- Taylor v. Illinois, 484 U.S. 400, 408-10 (1988)
- United States v. Valenzuela-Bernal, 458 U.S. 858, 867-68 (1982)
- State v. Kerchusky, 138 Idaho 671, 676, 67 P.3d 1283, 1288 (Ct. App. 2003)
- State v. White, 97 Idaho 708, 711-12, 551 P.2d 1344, 1347-48 (1976)
- State v. Calley, 140 Idaho 663, 665-66, 99 P.3d 616, 618-19 (2004)
- State v. Sheahan, 139 Idaho 267, 284, 77 P.3d 956, 973 (2003)

