

SUPREME COURT OF INDIANA

Nicoson v. State

938 N.E.2d 660 (Ind. 2010) · No. No. 32S04-1003-CR-150 · Decided December 15, 2010

SUMMARY

The Supreme Court of Indiana held that imposing an additional five-year firearm-use enhancement on a Class B felony criminal-confinement conviction did not violate double jeopardy. The court distinguished the statutory elevation based on being armed with a deadly weapon from the separate enhancement requiring proof that the defendant used a firearm, concluding that the legislature authorized both. A dissent argued that the enhancements relied on the same behavior and therefore constituted impermissible multiple punishment.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Shepard, Chief Justice; Dickson, Justice; David, Justice; Rucker, Justice; Sullivan, Justice
JURISDICTION	Indiana
DECIDED	December 15, 2010
DOCKET	No. 32S04-1003-CR-150
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nicoson appealed his criminal-confinement convictions and the five-year firearm-use sentencing enhancement on double-jeopardy grounds. The Indiana Court of Appeals rejected his arguments, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo because it presents a pure question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joshua G. Nicoson v. State of Indiana

TOPICS

- sentencing
- double jeopardy
- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Indiana's double-jeopardy provisions prohibit imposing a five-year firearm-use enhancement on a Class B criminal-confinement conviction that was elevated because the defendant was armed with a deadly weapon.
2. Whether Indiana statutes authorize the additional fixed five-year sentence when the defendant both committed criminal confinement as a Class B felony while armed with a deadly weapon and used a firearm during the offense.

HOLDINGS

1. The additional five-year firearm-use enhancement does not violate Indiana's constitutional prohibition against double jeopardy in these circumstances.
2. The statutes distinguish mere possession or being armed with a deadly weapon from actual use of a firearm, and the defendant's firing, pointing, and brandishing of the firearm satisfied the use requirement.

KEY QUOTATIONS

"claims of multiple sentencing enhancements turn on statutory interpretation." (663)

"Mere possession of a firearm or being "armed" with a deadly weapon is not enough." (665)

"The legislative direction in the language of the statutes is explicit." (665)

FACTUAL BACKGROUND

Nicoson confronted Jeremy Shepherd and others in a vehicle after Shepherd came to speak with him about a relationship. Nicoson pointed a Tec-9 handgun at the occupants, ordered them to stop and exit, fired a warning shot, and fired additional shots at the vehicle as it drove away. He was convicted of criminal confinement as a Class B felony because he was armed with a deadly weapon, and the trial court added five years for knowingly or intentionally using a firearm during the offense.

PROCEDURAL HISTORY

The trial court conducted a bench trial and found Nicoson guilty of criminal confinement with a deadly weapon and pointing a firearm, while acquitting him of two confinement counts involving backseat passengers who escaped. The court imposed concurrent sentences of ten years for each confinement conviction and three years for each pointing conviction, adding five years to one confinement sentence under Indiana Code section 35-50-2-11 for use of a firearm. The Court of Appeals affirmed, and the Supreme Court affirmed after granting transfer.

DISPOSITION

affirmed

CASES CITED

- Nicoson v. State, 919 N.E.2d 1203 (Ind. Ct. App. 2010)
- Nicoson v. State, 929 N.E.2d 788 (Ind. 2010) (table)
- Richardson v. State, 717 N.E.2d 32, 49, 53, 56 (Ind. 1999)
- Miller v. State, 790 N.E.2d 437, 438 (Ind. 2003)
- Pierce v. State, 761 N.E.2d 826, 829-30 (Ind. 2002)
- Mills v. State, 868 N.E.2d 446, 452 (Ind. 2007)
- State v. Downey, 770 N.E.2d 794, 798 (Ind. 2002)
- Gardiner v. State, 928 N.E.2d 194, 196 (Ind. 2010)
- State v. Oddi-Smith, 878 N.E.2d 1245, 1248 (Ind. 2008)
- Mallard v. State, 816 N.E.2d 53, 57 (Ind. Ct. App. 2004)
- Mickens v. State, 742 N.E.2d 927, 931 (Ind. 2001)
- Guyton v. State, 771 N.E.2d 1141, 1143 (Ind. 2002)
- Games v. State, 684 N.E.2d 466, 474 (Ind. 1997), modified on other grounds, 690 N.E.2d 211 (Ind. 1997)