

SUPREME COURT OF FLORIDA

State v. VanBebber

848 So. 2d 1046 (Fla. 2003) · No. SC01-2558 · Decided May 8, 2003

SUMMARY

The Supreme Court of Florida held that the mitigating circumstance in section 921.0026(2)(j), Florida Statutes, is available to support a downward departure from a sentence for a felony DUI conviction. The court approved the Second District's decision in State v. VanBebber and disapproved State v. Warner to the extent it conflicted with that holding. The court concluded that the statute's exclusion of only capital felonies and its prohibition on using intoxication as a mitigating factor did not preclude consideration of the unsophisticated-manner, isolated-incident, and remorse mitigator.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Chief Justice Anstead; Justice Pariente; Justice Lewis; Senior Justice Shaw; Justice Quince; Justice Wells
JURISDICTION	Florida
DECIDED	May 8, 2003
DOCKET	SC01-2558
DISPOSITION	approved
PROCEDURAL POSTURE	The State sought review of a Second District Court of Appeal decision affirming a downward departure sentence in a felony DUI case. The district court certified conflict with the Fourth District's decision in State v. Warner.
STANDARD OF REVIEW	The availability and legal applicability of a statutory sentencing mitigator presents a question of statutory interpretation reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Florida; it approved the Second District's decision and disapproved conflicting Fourth District precedent to the extent inconsistent.
PARTIES	State of Florida v. Paul VanBebber

TOPICS

statutory interpretation

sentencing

appellate jurisdiction

appellate procedure

criminal procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the mitigator in section 921.0026(2)(j), Florida Statutes (Supp. 1998), is legally available to support a downward departure from a sentence for a felony DUI conviction.
2. Whether applying section 921.0026(2)(j) to a felony DUI conviction conflicts with section 921.0026(3), which excludes substance abuse or intoxication as a mitigating factor.

HOLDINGS

1. The mitigator in section 921.0026(2)(j), Florida Statutes (Supp. 1998), is available to support a downward departure from a sentence for a felony DUI conviction.
2. Applying section 921.0026(2)(j) to a felony DUI conviction does not conflict with section 921.0026(3), because intoxication itself may not serve as a mitigating factor, but other statutory mitigators may be considered when the offense involved intoxication.

KEY QUOTATIONS

“This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998,” (848 So. 2d at 1049)

“Because the statute states that the mitigator in section 921.0026(2)(j) applies to any felony offense, except any capital felony, committed on or after October 1, 1998, we hold that the mitigator in section 921.0026(2)(j) is available to support a downward departure from a felony DUI conviction.” (848 So. 2d at 1050)

“Section 921.0026 is clear and unambiguous and provides that the mitigators found therein are applicable to all felony offenses except capital felonies.” (848 So. 2d at 1051)

FACTUAL BACKGROUND

On May 23, 1999, Paul VanBebber drove after consuming enough alcohol to impair his faculties, ran a stop sign, and collided with a vehicle carrying a family of six. Three children were injured and the children's uncle was killed. VanBebber pleaded nolo contendere to the charged DUI offenses, expressed extreme and sincere remorse, and received a downward departure sentence based on section 921.0026(2)(j).

PROCEDURAL HISTORY

VanBebber pleaded nolo contendere to DUI-related offenses arising from a fatal collision. The trial court imposed a downward departure from the Criminal Punishment Code sentence based on the statutory mitigator for an offense committed in an unsophisticated manner, as an isolated incident, with remorse. The Second District affirmed and certified conflict with Warner. The Supreme Court of Florida approved the Second District's decision and disapproved Warner to the extent of conflict.

DISPOSITION

approved

CASES CITED

- State v. VanBebber, 805 So. 2d 918 (Fla. 2d DCA 2001)
- State v. Warner, 721 So. 2d 767 (Fla. 4th DCA 1998), approved on other grounds, 762 So. 2d 507 (Fla. 2000)
- Rollins v. Pizzarelli, 761 So. 2d 294, 297 (Fla. 2000)
- Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)
- State v. Beck, 763 So. 2d 506, 508 (Fla. 4th DCA 2000)
- State v. Sachs, 526 So. 2d 48, 49-51 (Fla. 1988)
- State v. Rife, 789 So. 2d 288, 292 (Fla. 2001)

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