

SUPREME COURT OF MINNESOTA

State v. Kebaso

713 N.W.2d 317 (Minn. 2006) · No. A04-1239 · Decided April 13, 2006

SUMMARY

The Minnesota Supreme Court held that immigration consequences may not be considered when determining which of multiple sentences to vacate or which offense to sentence under Minn. Stat. § 609.035. The court approved evaluating the seriousness of offenses based on factors such as the sentence imposed, statutory maximum, and nature of the offenses, and affirmed vacating the sentence for interference with a 911 call rather than the domestic-assault sentence. The court left unresolved whether immigration consequences may be considered in the initial sentencing of a gross misdemeanor.

CASE DETAILS

COURT	Supreme Court of Minnesota
WRITING FOR THE COURT	Russell A. Anderson, Chief Justice
JURISDICTION	Minnesota
DECIDED	April 13, 2006
DOCKET	A04-1239
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Minnesota Court of Appeals concerning which of two concurrent gross-misdemeanor sentences arising from a single behavioral incident should be vacated under Minn. Stat. § 609.035, and whether immigration consequences could be considered in making that determination.
STANDARD OF REVIEW	De novo review of the legal question whether courts may consider immigration consequences when determining which of multiple sentences to vacate or which offense to sentence under Minn. Stat. § 609.035.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Minnesota
PARTIES	Kefa Apiemi Kebaso v. State of Minnesota

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a court may consider the potential immigration consequences to a defendant when deciding which of multiple sentences to vacate or which of multiple offenses to sentence under Minn. Stat. § 609.035.
2. When multiple gross misdemeanors arising from a single behavioral incident carry the same statutory maximum and receive identical sentences, how a court determines which offense is the most serious for purposes of Minn. Stat. § 609.035.
3. Whether the court of appeals lacked an adequate record to decide which sentence to vacate.

HOLDINGS

1. A court may not consider the potential immigration consequences to a criminal defendant when deciding which of multiple sentences to vacate or which of multiple offenses to sentence on under Minn. Stat. § 609.035.
2. When multiple gross-misdemeanor offenses arising from a single behavioral incident carry the same statutory maximum and receive identical sentences, the offense that formed the essence of the behavioral incident is the most serious offense for purposes of Minn. Stat. § 609.035.
3. The court of appeals had authority to vacate the interference-with-a-911-call sentence, and the absence of additional facts about Kebaso's immigration status did not affect the decision because those facts were legally irrelevant.

KEY QUOTATIONS

“When multiple gross misdemeanor offenses carry the same statutory maximum potential sentence and the district court imposed the same sentence for each offense, the offense that formed the essence of the behavioral incident is the most serious offense for purposes of section 609.035.” (713 N.W.2d at 323)

“Thus, we hold that a court may not consider the potential immigration consequences to a criminal defendant when deciding which of multiple sentences to vacate or which of multiple offenses to sentence on under Minn.Stat. § 609.035.” (713 N.W.2d at 323)

FACTUAL BACKGROUND

Police responded to a 911 call from an apartment after hearing a woman scream and say words including “knife” and “kill me.” Officers entered and found Kebaso, his former wife, and Kebaso's twelve-year-old son; they observed a butcher cleaver and received statements that Kebaso had threatened his former wife with it, prevented her from leaving, and taken the telephone from her. Kebaso was convicted of domestic assault, interference with a 911 call, and disorderly conduct, and received identical concurrent one-year sentences on the two gross

misdemeanors. The domestic-assault sentence carried potentially severe immigration consequences because it qualified as an aggravated felony under federal immigration law.

PROCEDURAL HISTORY

Kebaso was convicted after a bench trial of domestic assault, interference with a 911 call, and disorderly conduct. The district court imposed identical concurrent 365-day sentences on the two gross misdemeanors, with execution of 245 days stayed, and denied Kebaso's request to reduce the sentence because of immigration consequences. The court of appeals held that the two gross misdemeanors arose from a single behavioral incident, directed that one sentence be vacated, and vacated the interference-with-a-911-call sentence because domestic assault was the more serious offense. The Minnesota Supreme Court granted review on whether immigration consequences could be considered and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kebaso (Kebaso II), No. A04-1239, 2005 WL 1153727 (Minn. App. May 17, 2005)
- State v. Kebaso (Kebaso I), No. C1-02-596, 2003 WL 1702258 (Minn. App. Apr. 1, 2003)
- In re R.J.E., 642 N.W.2d 708, 710 (Minn. 2002)
- State v. Norregaard, 384 N.W.2d 449, 449-450 (Minn. 1986)
- State v. Bookwalter, 541 N.W.2d 290, 294 (Minn. 1995)
- State v. Johnson, 273 Minn. 394, 399, 141 N.W.2d 517, 522 (1966)
- State v. Morris, 281 Minn. 119, 123, 160 N.W.2d 715, 718 (1968)
- State v. Herberg, 324 N.W.2d 346, 350 (Minn. 1982)
- State v. Boley, 299 N.W.2d 924, 926 (Minn. 1980)
- State v. Van Gorden, 326 N.W.2d 633, 634 (Minn. 1982)
- State v. Alt, 529 N.W.2d 727, 731 (Minn. App. 1995)
- State v. Mendoza, 638 N.W.2d 480, 483 (Minn. App. 2002), rev. denied (Minn. Apr. 16, 2002)
- State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982)
- State v. Staten, 390 N.W.2d 914, 918 (Minn. App. 1986)
- State v. Sherwood, 341 N.W.2d 574, 577 (Minn. App. 1983)
- State v. Misquidace, 644 N.W.2d 65, 68 (Minn. 2002)
- State v. Lambert, 392 N.W.2d 242, 243-244 (Minn. 1986)
- Wireko v. Reno, 211 F.3d 833, 835-836 (4th Cir. 2000)
- United States v. Maung, 320 F.3d 1305, 1309 (11th Cir. 2003)
- United States v. Aleskerova, 300 F.3d 286, 299-301 (2d Cir. 2002)