

SUPREME COURT OF NEW MEXICO

Kersey v. Hatch

148 N.M. 381 (N.M. 2010) · No. No. 31,325 · Decided April 14, 2010

SUMMARY

The New Mexico Supreme Court held that *State v. Frazier* announced a new procedural rule providing that felony murder and its predicate felony are subsumed for double-jeopardy purposes. Applying the Teague retroactivity standard, the court concluded that the rule did not apply retroactively to Kersey’s finalized convictions because it was neither substantive nor a watershed rule of criminal procedure. The court affirmed dismissal of Kersey’s state habeas petition seeking to vacate his kidnapping conviction.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Maes, Justice; Charles W. Daniels, Chief Justice; Patricio M. Serna, Justice; Richard C. Bosson, Justice; Edward L. Chávez, Justice
JURISDICTION	New Mexico
DECIDED	April 14, 2010
DOCKET	No. 31,325
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner sought state habeas corpus relief, arguing that <i>State v. Frazier</i> required vacatur of his kidnapping conviction because the predicate felony was subsumed into his felony-murder conviction. The trial court dismissed the petition, and the Supreme Court of New Mexico granted certiorari to review whether <i>Frazier</i> applied retroactively.
STANDARD OF REVIEW	Retroactivity is a legal question reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Jerry Alvin Kersey, Petitioner v. Timothy Hatch, Warden, Respondent

TOPICS

- state post-conviction relief
- habeas corpus
- double jeopardy
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether *State v. Frazier* announced a new rule of law.
2. Whether Kersey's convictions were final before *Frazier* was decided.
3. Whether New Mexico should apply the *Teague* rather than the *Linkletter* standard to determine the retroactivity of new rules in state habeas proceedings.
4. Whether *Frazier*'s rule that felony murder and its predicate felony are subsumed offenses is substantive or a watershed procedural rule subject to retroactive application on habeas review.

HOLDINGS

1. *State v. Frazier* announced a new rule because it departed from prior New Mexico precedent permitting separate convictions for felony murder and the predicate felony when the conduct was factually distinct, replacing that inquiry with a bright-line rule that the offenses are subsumed in every case.
2. New Mexico courts should apply the *Teague* standard, rather than the *Linkletter* standard, when deciding whether a new rule applies retroactively to finalized criminal convictions in habeas corpus proceedings.
3. *Frazier*'s new double-jeopardy rule is procedural rather than substantive and is not a watershed rule of criminal procedure; therefore, it does not apply retroactively to Kersey's finalized conviction in a habeas proceeding.

KEY QUOTATIONS

"Pursuant to the principles announced by the United States Supreme Court in Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989), we conclude that Frazier announced a new rule of law, which is procedural in nature and, therefore, not subject to retroactive application." (685)

"Accordingly, pursuant to Teague and its progeny, we conclude that new rules generally should not be afforded retroactive effect unless (1) the rule is substantive in nature, in that it "alters the range of conduct or the class of persons that the law punishes," Frawley, 2007-NMSC-057, ¶ 39, 143 N.M. 7, 172 P.3d 144 (quoting Schiro, 542 U.S. at 353, 124 S.Ct. 2519), or (2) although procedural in nature, the rule announces a watershed rule of criminal procedure" (691)

"Accordingly, we conclude that Frazier formulated a new rule of criminal procedure, which does not implicate the fundamental fairness or accuracy of the criminal proceeding and, as such, is not available for retroactive application in habeas corpus proceedings." (693)

FACTUAL BACKGROUND

Kersey impersonated a police detective at Roswell High School, removed the victim from the school, handcuffed him, and transported him to another location. Kersey and his half-brother killed the victim by strangling and stabbing him, after which Kersey demanded a ransom and later confessed his involvement. The jury returned a

general verdict of first-degree murder under both willful and premeditated murder and felony-murder theories, and Kersey was also convicted of kidnapping.

PROCEDURAL HISTORY

Kersey was convicted by a jury of first-degree murder, kidnapping, conspiracy, and tampering with evidence and received a life sentence plus eighteen years. The Supreme Court of New Mexico affirmed his convictions on direct appeal in 1995, and federal habeas relief was later denied by the federal district court and affirmed by the Tenth Circuit. After the New Mexico Supreme Court decided *State v. Frazier* in 2007, Kersey filed a state habeas petition seeking vacatur of his kidnapping conviction; the trial court dismissed the petition. The Supreme Court affirmed that dismissal.

DISPOSITION

affirmed

CASES CITED

- *State v. Frazier*, 2007-NMSC-032, 142 N.M. 120, 164 P.3d 1
- *State v. Kersey*, 120 N.M. 517, 903 P.2d 828 (1995)
- *Swafford v. State*, 112 N.M. 3, 810 P.2d 1223 (1991)
- *State v. Foster*, 1999-NMSC-007, 126 N.M. 646, 974 P.2d 140
- *State v. Gonzales*, 2007-NMSC-059, 143 N.M. 25, 172 P.3d 162
- *State v. Mora*, 1997-NMSC-060, 124 N.M. 346, 950 P.2d 789
- *State v. Ortega*, 112 N.M. 554, 817 P.2d 1196 (1991)
- *State v. Mascarenas*, 2000-NMSC-017, 129 N.M. 230, 4 P.3d 1221
- *State v. Frawley*, 2007-NMSC-057, 143 N.M. 7, 172 P.3d 144
- *State v. Forbes*, 2005-NMSC-027, 138 N.M. 264, 119 P.3d 144
- *State v. Nunez*, 2000-NMSC-013, 129 N.M. 63, 2 P.3d 264
- *Santillanes v. State*, 115 N.M. 215, 849 P.2d 358 (1993)
- *Griffith v. Kentucky*, 479 U.S. 314 (1987)
- *Teague v. Lane*, 489 U.S. 288 (1989)
- *Danforth v. Minnesota*, 552 U.S. 264 (2008)
- *United States v. Salerno*, 964 F.2d 172 (2d Cir. 1992)
- *Taylor v. State*, 717 N.E.2d 90 (Ind. 1999)
- *Stein v. Alpine Sports, Inc.*, 1998-NMSC-040, 126 N.M. 258, 968 P.2d 769
- *Campos v. Bravo*, 2007-NMSC-021, 141 N.M. 801, 161 P.3d 846
- *Montoya v. Ulibarri*, 2007-NMSC-035, 142 N.M. 89, 163 P.3d 476
- *Harris v. Nelson*, 394 U.S. 286 (1969)

