

SUPREME COURT OF KANSAS

State v. Campbell, 273 Kan. 414

44 P.3d 349 (2002) · No. No. 86,605 · Decided April 19, 2002

SUMMARY

The Supreme Court of Kansas held that the district court retained jurisdiction to impose sentence on felony counts after an extended delay because the original sentence was illegal and the defendant had consented to the delay. The court also held that the defendant knowingly and voluntarily waived his statutory right to appeal under a sentencing agreement. The judgment was affirmed.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Lockett, J.
JURISDICTION	Kansas
DECIDED	April 19, 2002
DOCKET	No. 86,605
DISPOSITION	affirmed
PROCEDURAL POSTURE	Campbell appealed from the imposition of sentences on several felony counts more than three years after his original sentencing. He also sought review of the failure to suppress statements and the sufficiency of the evidence, while the State argued that he had waived his right to appeal under a sentencing agreement.
STANDARD OF REVIEW	Unlimited review applies to questions of jurisdiction and interpretation of the Kansas Sentencing Guidelines Act; the court independently determines those legal questions.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential authority in Kansas.
PARTIES	Kenyon T. Campbell v. State of Kansas

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- statutory interpretation
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court retained jurisdiction to impose sentences on felony counts that had not been sentenced at the original sentencing hearing.
2. Whether Campbell knowingly and voluntarily waived his statutory right to appeal through the sentencing agreement.
3. Whether Campbell's remaining challenges to suppression of statements and sufficiency of the evidence could be reached despite the appellate waiver.

HOLDINGS

1. The district court retained jurisdiction to impose sentences on the remaining counts because Campbell's original sentence was illegal for failing to impose a definite term of confinement, Campbell could have demanded sentencing at the original hearing, and his failure to do so constituted consent to the delay.
2. Campbell knowingly and voluntarily waived his statutory right to appeal his convictions by signing and accepting a sentencing agreement that expressly required waiver of appellate rights.

KEY QUOTATIONS

"Where a person convicted of a crime has never been legally sentenced, a proper sentence may later be imposed." (273 Kan. at 424)

"Thus, Campbell knowingly and voluntarily waived the right to appeal his conviction when he entered into the sentencing agreement with the State." (273 Kan. at 425)

FACTUAL BACKGROUND

Campbell and Ronald Etheridge participated in armed robberies at two businesses, during which one victim was forced into a vehicle trunk and another man, John Rees II, was shot and killed. Evidence included eyewitness testimony, statements Campbell made to his girlfriend and brother, recorded telephone conversations, and physical evidence connecting the defendants to the events. Campbell entered a post-conviction sentencing agreement promising cooperation and waiver of appellate rights in exchange for a recommended reduced sentence.

PROCEDURAL HISTORY

A jury convicted Campbell of first-degree murder, aggravated kidnapping, aggravated criminal sodomy, kidnapping, attempted rape, attempted kidnapping, and two counts of aggravated robbery. After the verdict, Campbell entered a sentencing agreement requiring cooperation and waiver of appellate rights in exchange for a recommended 300-month sentence. The district court imposed sentence on the murder and aggravated-kidnapping counts but suspended imposition of sentences on the remaining counts, later imposing consecutive sentences on those counts after Campbell refused to testify against Ronald Etheridge. The Kansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Osbey, 238 Kan. 280, 710 P.2d 676 (1985)
- State v. Woodbury, 133 Kan. 1, 298 P. 794 (1931)
- State v. Jacques, 270 Kan. 173, 14 P.3d 409 (2000)
- State v. Flores, 268 Kan. 657, 999 P.2d 919 (2000)
- State v. Bolin, 266 Kan. 18, 968 P.2d 1104 (1998)
- State v. Johnson, 269 Kan. 594, 7 P.3d 294 (2000)
- State v. Duke, 263 Kan. 193, 946 P.2d 1375 (1997)
- Mintie v. Biddle, 15 F.2d 931 (8th Cir. 1926)
- Miller v. Aderhold, 288 U.S. 206, 53 S. Ct. 325, 77 L. Ed. 702 (1933)
- Zerbst v. Nahas, 67 F.2d 742 (10th Cir. 1933)
- People v. Drake, 61 N.Y.2d 359, 474 N.Y.S.2d 276, 462 N.E.2d 376 (1984)
- State v. Fennell, 218 Kan. 170, 542 P.2d 686 (1975)
- Richardson v. Hand, 182 Kan. 326, 320 P.2d 837 (1958)
- State v. Ji, 255 Kan. 101, 872 P.2d 748 (1994)
- State v. Willingham, 266 Kan. 98, 967 P.2d 1079 (1998)
- United States v. Hernandez, 134 F.3d 1435 (10th Cir. 1998)

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