

SUPREME COURT OF OREGON

State v. Sierra

361 Or. 723 (2017) · No. SC S064237; CA A153534; CC 05C40355 · Decided August 10, 2017

SUMMARY

The Oregon Supreme Court affirmed the Court of Appeals and circuit court in a case involving resentencing after reversal of two of the defendant's convictions. The court held that ORS 138.222(5) (b) authorized resentencing on all convictions remaining on remand, including convictions for which the original sentences had been served, and that the federal Double Jeopardy Clause did not preclude that result. The court further held that, under *North Carolina v. Pearce* and *State v. Partain*, a more severe sentence imposed by a different sentencing judge requires reasons on the record that are based on facts unknown to the original sentencing judge and are wholly logical and nonvindictive.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Justice Walters; Chief Justice Balmer; Justice Kistler; Justice Landau; Justice Nakamoto; Senior Justice pro tempore Baldwin
JURISDICTION	Oregon
DECIDED	August 10, 2017
DOCKET	SC S064237; CA A153534; CC 05C40355
DISPOSITION	affirmed
PROCEDURAL POSTURE	Review of a Court of Appeals decision affirming a circuit court's resentencing of defendant after the Supreme Court of Oregon reversed two of his convictions and remanded for resentencing on the remaining convictions.
STANDARD OF REVIEW	Questions of statutory interpretation and constitutional law were reviewed as matters of law. The court also considered whether the increased sentence satisfied the <i>Pearce/Partain</i> due-process requirements.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Oregon
PARTIES	Joaquin Sierra v. State of Oregon

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether ORS 138.222(5)(b) and the common-law rule recognized in *State v. Smith* permitted the trial court to resentence Sierra on all convictions remaining after the appellate reversal, including unlawful-use-of-a-weapon convictions for which the original sentences had been served.
2. Whether the federal Double Jeopardy Clause barred resentencing on the unlawful-use-of-a-weapon convictions after Sierra had served the original sentences.
3. Whether due process under *North Carolina v. Pearce* and *State v. Partain* prohibited the imposition of a more severe sentence on remand by a different sentencing judge unless the judge articulated sufficient nonvindictive reasons.

HOLDINGS

1. When an appellate court reverses a conviction in a multicount case involving at least one felony and affirms other counts, ORS 138.222(5)(b) authorizes the trial court on remand to resentence the defendant on all convictions that remain, including convictions for which the original sentences have been served, at least where the convictions arose from the same criminal episode.
2. The federal Double Jeopardy Clause did not bar the trial court from imposing new sentences on the unlawful-use-of-a-weapon convictions remaining on remand.
3. When a different judge imposes a more severe sentence on remand, the judge must affirmatively state reasons for the increase on the record. The presumption of vindictiveness is avoided when the reasons are wholly logical and nonvindictive; the reasons need not be limited exclusively to facts occurring after the original sentencing.

KEY QUOTATIONS

“The answer to both questions is no.” (at 725)

“We conclude that, in enacting ORS 138.222(5)(b), the legislature intended to permit judges to resentence defendants on all of the convictions that remain on remand.” (at 732)

*“Thus, we decline to adopt a categorical rule that a difference in judges makes the first prophylactic rule adopted in *Pearce* inapplicable.”* (at 743)

*“As long as the second judge gives a “wholly logical, nonvindictive reason” for the more severe sentence, we conclude that the second *Pearce* requirement has been met.”* (at 744)

FACTUAL BACKGROUND

A jury convicted Sierra of one count of first-degree kidnapping, two counts of second-degree kidnapping, one count of fourth-degree assault, and five counts of unlawful use of a weapon. The original court imposed an aggregate 250-month sentence, including a 110-month sentence for first-degree kidnapping and concurrent sentences of 14 months or less on the remaining convictions. After two second-degree kidnapping convictions were reversed, a different judge resentenced Sierra to 276 months based in part on four enhancement factors found by a jury and on information concerning the victims' continued impact and Sierra's prison disciplinary record.

PROCEDURAL HISTORY

A jury convicted Sierra of nine offenses and the circuit court imposed a total sentence of 250 months. The Oregon Supreme Court reversed two kidnapping convictions and remanded for resentencing on the remaining convictions. A different sentencing judge imposed a 276-month aggregate sentence, including upward departure sentencing based on jury-found enhancement factors and new sentences on several unlawful-use-of-a-weapon convictions. The Court of Appeals affirmed, and the Supreme Court of Oregon granted review and affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- State v. Sierra, 349 Or. 506, 254 P.3d 149 (2010), modified and adhered to on reconsideration, 349 Or. 604, 247 P.3d 759 (2011)
- State v. Smith, 323 Or. 450, 918 P.2d 824 (1996)
- State v. Partain, 349 Or. 10, 239 P.3d 232 (2010)
- State v. Gaines, 346 Or. 160, 164, 206 P.3d 1042 (2009)
- Febuary v. State of Oregon, 361 Or. 544, 562-63, 396 P.3d 894 (2017)
- North Carolina v. Pearce, 395 U.S. 711, 725-26, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)
- Texas v. McCullough, 475 U.S. 134, 138-41, 106 S. Ct. 976, 89 L. Ed. 2d 104 (1986)
- State v. Turner, 247 Or. 301, 313-15, 429 P.2d 565 (1967)
- United States v. DiFrancesco, 449 U.S. 117, 127-28, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980)
- Jones v. Thomas, 491 U.S. 376, 385, 109 S. Ct. 2522, 105 L. Ed. 2d 322 (1989)
- United States v. Radmall, 340 F.3d 798, 801 (9th Cir. 2003)
- Sterling v. Cupp, 290 Or. 611, 614, 625 P.2d 123 (1981)
- Ailes v. Portland Meadows, Inc., 312 Or. 376, 381-82, 823 P.2d 956 (1991)
- Fulmer v. Timber Inn Restaurant and Lounge, Inc., 330 Or. 413, 424, 9 P.3d 710 (2000)
- State v. Fry, 180 Or. App. 237, 246, 42 P.3d 369 (2002)
- Alabama v. Smith, 490 U.S. 794, 796-801, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989)
- Chaffin v. Stynchcombe, 412 U.S. 17, 24-28, 93 S. Ct. 1977, 36 L. Ed. 2d 714 (1973)

- Colten v. Kentucky, 407 U.S. 104, 116-17, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972)
- Wasman v. United States, 468 U.S. 559, 569, 572, 104 S. Ct. 3217, 82 L. Ed. 2d 424 (1984)
- United States v. Daddino, 5 F.3d 262, 265 (7th Cir. 1993)
- United States v. Arrellano-Rios, 799 F.2d 520, 522-24 (9th Cir. 1986)
- Outdoor Media Dimensions Inc. v. State of Oregon, 331 Or. 634, 659-60, 20 P.3d 180 (2001)

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