

SUPREME COURT OF NEW JERSEY

State v. Jones, 232 N.J. 308

180 A.3d 288 (2018) · Decided March 22, 2018

SUMMARY

The New Jersey Supreme Court considers whether a defendant's right of allocution was infringed when the sentencing court prevented him from interrupting the prosecutor and did not invite him to respond after the prosecutor's final remarks. The Court holds that the defendant's claim fails because he and his counsel did not request an opportunity to speak further and did not develop a record identifying what additional mitigating information he would have presented. The Court affirms the sentence while identifying factors courts should consider when deciding whether to permit a defendant to respond to new substantive material raised by the State.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice LaVecchia; Chief Justice Rabner; Justice Albin; Justice Patterson; Justice Fernandez-Vina; Justice Solomon; Justice Timpone
JURISDICTION	New Jersey
DECIDED	March 22, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant sought review of an Appellate Division excessive-sentence ruling rejecting his claim that the sentencing court violated his right to allocution by preventing him from interrupting the prosecutor and failing to invite him to respond after the prosecutor's final remarks. The Supreme Court of New Jersey granted certification and affirmed.
STANDARD OF REVIEW	Abuse of discretion for review of the sentencing court's control of the sentencing proceeding and imposition of sentence.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of New Jersey
PARTIES	Donnell Jones v. State of New Jersey

TOPICS

- sentencing
- criminal procedure
- post-conviction relief
- plea bargaining

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the sentencing court abused its discretion by preventing Jones from interrupting the prosecutor's final sentencing remarks and by not independently asking whether he wished to respond before sentence was imposed.
2. Whether Jones was denied his right under New Jersey Rule of Court 3:21-4(b) to allocute and present mitigating information.
3. Whether resentencing was required without a showing of prejudice based on the alleged denial or infringement of allocution.

HOLDINGS

1. The sentencing court did not abuse its discretion by preventing Jones from interrupting the prosecutor's final remarks and proceeding to sentencing when neither Jones nor his counsel requested an additional opportunity to speak.
2. When the State introduces genuinely new substantive material in its final sentencing remarks, a defendant generally should be allowed an opportunity to respond, subject to the sentencing court's reasonable control over the proceeding.
3. A complete denial of the right to allocution in violation of Rule 3:21-4(b) is structural error requiring resentencing without a showing of prejudice, but Jones established neither a complete denial nor an actionable infringement of that right.

KEY QUOTATIONS

"In the future, when it is necessary for the sentencing court to assess whether claimed new material advanced in closing by the State is truly "new substantive material" to which the defendant seeks to respond, the court should first consider whether the defendant knew about the fact." (at 298)

"The onus is on defendant to make his record to support an issue to be pursued on appeal." (at 298)

"The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself." (at 295)

FACTUAL BACKGROUND

On June 14, 2012, Jones and an accomplice committed an armed robbery against a woman and her young daughter in a New Brunswick park. Jones pleaded guilty to armed robbery and possession of a weapon by a certain person under a negotiated agreement. At sentencing, Jones allocuted and stated that he was not sorry because the woman was not the intended target; when he attempted to speak during the prosecutor's final remarks, the court told him no. Jones and his counsel did not request an opportunity to speak after the prosecutor finished, and the prosecutor's factual assertions were reportedly based on discovery or the presentence report.

PROCEDURAL HISTORY

Jones pleaded guilty to first-degree armed robbery and second-degree possession of a weapon by a certain person in exchange for dismissal of other charges and agreed sentencing recommendations. The sentencing court imposed the bargained-for sentences. After a PCR proceeding concerning counsel's failure to file a direct appeal, the Appellate Division permitted a notice of appeal, exercised original jurisdiction, and affirmed the sentence while remanding only for correction of jail and gap-time credits. The Supreme Court granted certification on the allocution issue and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Supreme Court affirmed the Appellate Division's judgment. The previously ordered remand was limited to entry of a corrected judgment of conviction reflecting agreed jail credit and gap-time credit.

CASES CITED

- State v. Tedesco, 214 N.J. 177, 188-89, 69 A.3d 103 (2013)
- State v. Robinson, 217 N.J. 594, 603, 92 A.3d 656 (2014)
- State v. Roth, 95 N.J. 334, 364-65, 471 A.2d 370 (1984)
- State v. Blackmon, 202 N.J. 283, 297, 303-07, 997 A.2d 194 (2010)
- State v. DiFrisco, 137 N.J. 434, 477-78, 645 A.2d 734 (1994)
- State v. Zola, 112 N.J. 384, 428-32, 548 A.2d 1022 (1988)
- Green v. United States, 365 U.S. 301, 304, 81 S. Ct. 653, 5 L. Ed. 2d 670 (1961)
- State v. Cerce, 46 N.J. 387, 396-97, 217 A.2d 319 (1966)
- State v. Hester, 192 N.J. 289, 927 A.2d 1288 (2007)
- State v. Robinson, 200 N.J. 1, 20, 974 A.2d 1057 (2009)
- State v. Perry, 124 N.J. 128, 163, 590 A.2d 624 (1991)
- State v. Marshall, 123 N.J. 1, 92, 586 A.2d 85 (1991)
- Shifflett v. State, 315 Md. 382, 554 A.2d 814, 817 (1989)
- State v. Yates, 195 Ohio App. 3d 33, 958 N.E.2d 640, 642, 644-45 (2011)

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