

SUPREME COURT OF KANSAS

State v. Albano

State v. Albano · No. No. 120,767 · Decided May 28, 2021

SUMMARY

The Kansas Supreme Court held that section 5 of the Kansas Constitution Bill of Rights does not guarantee a defendant the right to have a jury determine sentence-enhancing prior convictions under the Kansas Sentencing Guidelines Act. The court distinguished prior convictions that constitute elements of a separate offense, which must be decided by a jury, from prior convictions considered only in determining punishment, which fall within the court’s traditional sentencing function. The court affirmed the Court of Appeals and the district court’s judgment.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Justice Wall
JURISDICTION	Kansas
DECIDED	May 28, 2021
DOCKET	No. 120,767
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury convicted Albano of two drug offenses and the district court imposed a presumptive sentence based in part on judicial findings concerning her prior convictions, the Kansas Court of Appeals affirmed. The Supreme Court of Kansas granted review of Albano's constitutional challenge to the revised Kansas Sentencing Guidelines Act.
STANDARD OF REVIEW	The constitutional challenge presents a question of law subject to unlimited review.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Anita Jo Albano v. State of Kansas

TOPICS

- constitutional law
- sentencing
- criminal procedure
- statutory interpretation

PRACTICE AREAS

constitutional law

criminal law

sentencing

criminal procedure

QUESTIONS PRESENTED

1. Whether section 5 of the Kansas Constitution Bill of Rights independently guarantees a jury determination of sentence-enhancing prior convictions.
2. Whether the revised Kansas Sentencing Guidelines Act violates section 5 by permitting a sentencing court to determine a defendant's criminal history by a preponderance of the evidence.
3. Whether the Supreme Court of Kansas had jurisdiction to review a presumptive sentence when the defendant challenged the constitutionality of the overall sentencing scheme.

HOLDINGS

1. Section 5 may provide protections different from or greater than those provided by the Sixth Amendment, and a section 5 challenge must be analyzed independently when the state constitutional text and historical inquiry warrant it.
2. Section 5 does not guarantee a defendant the right to have a jury determine the existence of prior convictions used to calculate criminal history and impose a sentence under the revised Kansas Sentencing Guidelines Act.
3. The court had jurisdiction because Albano challenged the constitutionality of the overall statutory sentencing scheme rather than the legality of her individual presumptive sentence.

KEY QUOTATIONS

“Accordingly, we hold the KSGA provisions authorizing the court to make criminal history findings for purposes of imposing a sentence do not violate section 5 because such judicial findings do not impair the traditional functions of the jury in Kansas criminal proceedings.” (at 22)

“There is no evidence to suggest the common law required sentence-enhancing prior convictions to be proven to a jury in Kansas criminal proceedings at the time the Kansas Constitution was adopted.” (at 22)

“Rather, the necessity of a jury finding depends on whether the prior conviction defines a separate offense. If it does, then the issue must go to the jury as it falls within the jury's traditional role to determine guilt or innocence of the crime charged. If, however, the prior conviction goes to the punishment only, the court may determine its existence as part of its traditional role to impose a legally appropriate sentence.” (at 13-14)

FACTUAL BACKGROUND

A jury convicted Anita Jo Albano of one severity level 2 drug felony and one severity level 3 drug felony for distributing a controlled substance within 1,000 feet of a school. At sentencing, the district court found that she had two prior nonperson felony convictions and assigned her a criminal-history score of F. Using the revised Kansas Sentencing Guidelines Act, the court imposed a controlling term of 101 months' imprisonment, the mitigated term in the applicable presumptive range.

PROCEDURAL HISTORY

A jury convicted Albano of two counts of distributing a controlled substance within 1,000 feet of a school. The Riley District Court assigned her a criminal-history score of F based on two prior nonperson felony convictions and imposed a controlling sentence of 101 months. The Court of Appeals affirmed the convictions and sentence, and the Supreme Court of Kansas granted review solely to address the section 5 challenge to the sentencing scheme.

DISPOSITION

affirmed

CASES CITED

- State v. Albano, 58 Kan. App. 2d 117, 464 P.3d 332 (2020)
- Kimball and others v. Connor, Starks and others, 3 Kan. 414, 432 (1866)
- State v. Love, 305 Kan. 716, 734-37, 387 P.3d 820 (2017)
- U.S.D. No. 229 v. State, 256 Kan. 232, 239, 885 P.2d 1170 (1994)
- State v. Gaona, 293 Kan. 930, 957, 270 P.3d 1165 (2012)
- Almendarez-Torres v. United States, 523 U.S. 224, 247, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998)
- Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- State v. Ivory, 273 Kan. 44, 44, 41 P.3d 781 (2002)
- State v. Lawson, 296 Kan. 1084, 1090-92, 297 P.3d 1164 (2013)
- Hodes & Nauser, MDs v. Schmidt, 309 Kan. 610, 624, 440 P.3d 461 (2019)
- State v. McDaniel & Owens, 228 Kan. 172, 184-85, 612 P.2d 1231 (1980)
- In re Rolfs, Petitioner, 30 Kan. 758, 762, 1 P. 523 (1883)
- In re Clancy, Petitioner, 112 Kan. 247, 249, 210 P. 487 (1922)
- State v. Conley, 270 Kan. 18, 35, 11 P.3d 1147 (2000)
- Newkirk v. Nothwehr, 210 Ariz. 601, 604, 115 P.3d 1264 (2005)
- People v. Wiley, 9 Cal. 4th 580, 586-87, 889 P.2d 541 (1995)
- State v. Smith, 150 Wash. 2d 135, 149-56, 75 P.3d 934 (2003)
- State v. O'Keefe, 125 Kan. 142, 145, 263 P. 1052 (1928)
- State v. Hathaway, 143 Kan. 605, 56 P.2d 89 (1936)
- State v. Woodman, 127 Kan. 166, 172, 272 P. 132 (1928)
- Levell v. Simpson, 142 Kan. 892, 894-95, 52 P.2d 372 (1935)
- Tuttle v. Commonwealth, 68 Mass. 505, 506 (1854)
- Hines v. The State, 26 Ga. 614, 616 (1859)
- Parke v. Raley, 506 U.S. 20, 26-27, 113 S. Ct. 517, 121 L. Ed. 2d 391 (1992)
- Oyler v. Boles, 368 U.S. 448, 452, 82 S. Ct. 501, 7 L. Ed. 2d 446 (1962)
- Graham v. West Virginia, 224 U.S. 616, 629, 32 S. Ct. 583, 56 L. Ed. 917 (1912)

- McDonald v. Massachusetts, 180 U.S. 311, 313, 21 S. Ct. 389, 45 L. Ed. 542 (1901)
- Chance v. State, 195 Kan. 711, 715, 408 P.2d 677 (1965)

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