

SUPREME COURT OF RHODE ISLAND

State v. Lubens Bienaime

State v. Lubens Bienaime · No. Nos. 2019-74-C.A. and 2019-371-C.A. (P2/92-2073A) · Decided November 19, 2021

SUMMARY

The Rhode Island Supreme Court affirmed the Superior Court judgments in consolidated appeals involving Lubens Bienaime’s 1993 second-degree sexual assault conviction and a 2019 probation-violation adjudication. The Court held that the appeal from the 1993 conviction was untimely and declined to treat it as a petition for certiorari. It further held that probation conditions attached when the sentence was pronounced and that the arrest warrant tolled the probationary period, making the 2018 violation notice timely.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Justice Melissa A. Long; Chief Justice Suttell; Justice Goldberg; Justice Robinson; Justice Lynch Prata; Justice Long
JURISDICTION	Rhode Island
DECIDED	November 19, 2021
DOCKET	Nos. 2019-74-C.A. and 2019-371-C.A. (P2/92-2073A)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from a Superior Court judgment of conviction for second-degree sexual assault entered after a 1993 jury trial and a 2019 judgment adjudicating Bienaime a probation violator. The Supreme Court decided the appeals after a show-cause order and affirmed the Superior Court judgments, while dismissing the untimely appeal from the 1993 conviction.
STANDARD OF REVIEW	Review of a probation-violation determination is limited to whether the hearing justice acted arbitrarily or capriciously in finding a violation. Questions of law and statutory interpretation are reviewed de novo. Timeliness of a criminal appeal is a jurisdictional or mandatory prerequisite under Rule 4(b).
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion
PARTIES	Lubens Bienaime v. State of Rhode Island

TOPICS

probation

appellate procedure

criminal procedure

statutory interpretation

writ of certiorari

PRACTICE AREAS

Criminal law

Criminal procedure

Appellate practice

Probation

QUESTIONS PRESENTED

1. Whether the appeal from the 1993 conviction was timely under Article I, Rule 4(b) of the Rhode Island Supreme Court Rules of Appellate Procedure.
2. Whether the Supreme Court should treat the untimely appeal from the 1993 conviction as a petition for certiorari.
3. Whether probation conditions attached when the trial justice pronounced a sentence that included probation, even though execution of the incarcerative portion was continued and the defendant was released on bail.
4. Whether the state's 2018 notice of probation violation was timely when an arrest warrant issued in 1993 and tolled the probationary period.

HOLDINGS

1. A criminal notice of appeal must be filed within twenty days after entry of the judgment in the Superior Court docket. Because Bienaime did not appeal until July 5, 2018, his appeal from the 1993 conviction was untimely and was dismissed.
2. The Supreme Court declined to treat Bienaime's untimely appeal as a petition for certiorari because the twenty-five-year delay was unreasonable and unexplained except by his own absence from the jurisdiction.
3. When a trial justice pronounces a sentence that includes probation, the implied condition that the defendant keep the peace and be of good behavior attaches immediately, even if execution of the incarcerative portion is continued and the defendant is released on bail.
4. The state's Rule 32(f) notice of probation violation was timely because the arrest warrant issued on June 28, 1993, tolled Bienaime's probationary period until he reappeared and the warrant was executed and canceled.

KEY QUOTATIONS

"This Court considers timeliness a "mandatory prerequisite for consideration by this Court of an appeal.""
(6)

"Where, after the defendant has exercised his right of allocution, a trial justice pronounces sentence that includes a period of probation but stays execution of the incarcerative portion, has the trial justice imposed a sentence such that the conditions of the defendant's probation attach?" (9-10)

"The implied condition of good behavior attaches when a suspended sentence is pronounced[.]" (12)

“We hold that the conditions of the defendant’s probation attached when the trial justice pronounced defendant’s sentence on June 25, 1993.” (16-17)

FACTUAL BACKGROUND

A Rhode Island jury convicted Bienaime of second-degree sexual assault in March 1993. On June 25, 1993, the trial justice sentenced him to ten years, with three years to serve and seven years suspended, with probation, and continued execution of the sentence until June 28 while releasing him on bail. Bienaime failed to appear, an arrest warrant issued, and he left Rhode Island and remained unavailable until his arrest at John F. Kennedy Airport in December 2017. The Superior Court later adjudicated him a probation violator and lifted three years of his suspended sentence.

PROCEDURAL HISTORY

Bienaime was convicted by a jury of second-degree sexual assault on March 16, 1993, and was sentenced on June 25, 1993, to ten years' imprisonment, with three years to serve and seven years suspended, with probation. He failed to appear for execution of sentence on June 28, 1993, and an arrest warrant issued. After he was arrested upon reentering the country in December 2017, the Superior Court ordered him to serve the unsuspended portion of his sentence and later adjudicated him a probation violator based on his failure to appear. The Supreme Court dismissed the appeal from the underlying conviction as untimely and affirmed the probation-violation judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Sostre, 736 A.2d 95, 96 (R.I. 1999) (mem.)
- State v. Pena-Rojas, 822 A.2d 921, 922-23 (R.I. 2003)
- Davis v. Rhode Island Board of Regents for Education, 121 R.I. 473, 476-77, 399 A.2d 1247, 1249 (1979)
- State v. Chandler, 225 A.3d 946, 947-48 (R.I. 2020)
- State v. Wiggins, 919 A.2d 987, 989 (R.I. 2007)
- State v. Marsich, 10 A.3d 435, 440 (R.I. 2010)
- State v. Smith, 766 A.2d 913, 924 (R.I. 2001)
- State v. Bryant, 670 A.2d 776, 779 (R.I. 1996)
- State v. Dantzler, 690 A.2d 338, 339-40 (R.I. 1997)
- State v. Jacques, 554 A.2d 193, 193, 195 (R.I. 1989)
- State v. Barber, 767 A.2d 78, 79 (R.I. 2001)
- State v. Baton, 688 A.2d 824, 825 (R.I. 1997)
- State v. Chu, 615 A.2d 1023, 1024 (R.I. 1992) (mem.)
- State v. Price, 820 A.2d 956, 972-73 (R.I. 2003)

- Price v. Wall, 31 A.3d 995, 1003 (R.I. 2011)
- Mello v. Superior Court, 117 R.I. 578, 582, 370 A.2d 1262, 1264 (1977)
- State v. Campbell, 833 A.2d 1228, 1233 (R.I. 2003)
- State v. Tavares, 837 A.2d 730, 733-34 (R.I. 2003)
- State v. Santos, 498 A.2d 1024, 1026 (R.I. 1985)
- State v. Taylor, 111 R.I. 653, 656, 306 A.2d 173, 175 (1973)
- State v. Price, 820 A.2d 956 (R.I. 2003)
- Price v. Wall, 31 A.3d 995 (R.I. 2011)