

SUPREME COURT OF KANSAS

State of Kansas v. Wilbur R. McElroy

Kansas v. McElroy, 281 Kan. 256 (2006) · No. No. 92,968 · Decided March 17, 2006

SUMMARY

The Kansas Supreme Court reversed Wilbur R. McElroy's conviction for violating the Kansas Offender Registration Act. The court held that the charging document and jury instruction alleged failure to notify the Sedgwick County Sheriff's Department, whereas the applicable statute required written notification to the Kansas Bureau of Investigation. The court also concluded that Sedgwick County was not a proper venue because the required notification was to be filed with the KBI in Shawnee County and the change of address occurred in California.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Davis, J.
JURISDICTION	Kansas
DECIDED	March 17, 2006
DOCKET	No. 92,968
DISPOSITION	reversed
PROCEDURAL POSTURE	McElroy appealed his conviction for a Kansas Offender Registration Act violation. The Kansas Supreme Court transferred the case on its own motion pursuant to K.S.A. 20-3018(c) and reversed the conviction.
STANDARD OF REVIEW	The sufficiency of the charging document, the existence of jurisdiction, and statutory interpretation are reviewed de novo or under an unlimited scope of review. Because the charging-document challenge was raised for the first time on appeal, the post-State v. Hall standard applied, under which the court liberally construes the information and asks whether the alleged defect prejudiced the defense, impaired the ability to plead a later conviction, or limited substantial rights to a fair trial. Venue is generally a question of fact for the jury, but jurisdiction is a question of law subject to unlimited review.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential

PARTIES

Wilbur R. McElroy v. State of Kansas

TOPICS

criminal procedure

statutory interpretation

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preservation of error

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QUESTIONS PRESENTED

1. Whether the complaint and jury instruction adequately charged a registration-of-offender violation under K.S.A. 2002 Supp. 22-4904(b)(1) when they alleged failure to notify the Sedgwick County Sheriff's Department rather than the Kansas Bureau of Investigation.
2. Whether Sedgwick County was a proper venue and had jurisdiction to prosecute the alleged failure to report a change of address when the notice was required to be sent to the Kansas Bureau of Investigation in Shawnee County and the change of address occurred in California.

HOLDINGS

1. The complaint and jury instruction failed to charge a registration-of-offender violation because K.S.A. 2002 Supp. 22-4904(b)(1) required the offender to provide written notice of a change of address to the Kansas Bureau of Investigation, while the charging documents alleged only a failure to notify the Sedgwick County Sheriff's Department.
2. Sedgwick County was not a proper venue and lacked jurisdiction to try McElroy for the charged registration violation because the required notification was to be sent to the KBI in Shawnee County, and the operative change of address occurred in California rather than Sedgwick County.

KEY QUOTATIONS

"The plain and unambiguous language of K.S.A. 2002 Supp. 22-4904(b)(1), the provision under which the defendant was charged in this case, only requires that the offender provide written notice to the KBI of a change of address." (281 Kan. at 262)

"Thus, even under our liberal post-Hall standard, the State failed to charge the defendant with a registration of offender offense by charging that the defendant failed to notify the Sedgwick County Sheriff's Office when he moved to California, rather than the KBI as required under K.S.A. 2002 Supp. 22-4904(b)(1)." (281 Kan. at 264)

"Thus, under the facts of this case, Sedgwick County was not an appropriate venue for this case and there was no jurisdiction to try defendant in Sedgwick County." (281 Kan. at 267)

FACTUAL BACKGROUND

McElroy, a convicted sex offender, was released on parole in February 2003 and initially registered a halfway-house address in Sedgwick County. On March 4, 2003, he told his parole officer that he was living at a different

Wichita address, and he continued to identify that address during several subsequent meetings before absconding from parole. After his arrest in California, Sedgwick County charged him with failing to notify the Sedgwick County Sheriff's Department of his change of address, although the applicable statute required written notice to the Kansas Bureau of Investigation.

PROCEDURAL HISTORY

McElroy was charged in Sedgwick County with failing to report a change of address under K.S.A. 2002 Supp. 22-4904(b)(1) and 22-4903. A jury found him guilty, and the district court sentenced him to nine months' imprisonment consecutive to his remaining postrelease supervision. On appeal, he challenged the sufficiency of the complaint and jury instruction and the venue of the prosecution; the Supreme Court of Kansas reversed.

DISPOSITION

reversed

CASES CITED

- State v. Hooker, 271 Kan. 52, 60, 21 P.3d 964 (2001)
- State v. Hall, 246 Kan. 728, 764-65, 793 P.2d 737 (1990)
- Ferguson v. State, 276 Kan. 428, 78 P.3d 40 (2003)
- State v. Martis, 277 Kan. 267, 275, 83 P.3d 1216 (2004)
- State v. Manbeck, 277 Kan. 224, 83 P.3d 190 (2004)
- State v. Van Hoet, 277 Kan. 815, 826, 89 P.3d 606 (2004)
- State v. Wilkinson, 269 Kan. 603, 609, 9 P.3d 1 (2000)
- State v. Stevens, 26 Kan. App. 2d 606, 609, 992 P.2d 1244 (1999), rev. denied, 268 Kan. 895 (2000)
- State v. Boorigie, 273 Kan. 18, 23, 41 P.3d 764 (2002)
- State v. Redford, 242 Kan. 658, 672, 750 P.2d 1013 (1988)
- State v. Stough, 273 Kan. 113, 116, 41 P.3d 281 (2002)
- State v. Schroeder, 279 Kan. 104, 108, 105 P.3d 1237 (2005)
- Travis v. United States, 364 U.S. 631, 636 (1961)
- United States v. Lombardo, 241 U.S. 73, 60 L. Ed. 897, 36 S. Ct. 508 (1916)
- State v. Snell, 131 Kan. 370, 291 P. 737 (1930)
- State v. Cuezze, Huston & Faltico, 225 Kan. 274, 280, 589 P.2d 626 (1979), modified by 225 Kan. 468, 595 P.2d 723 (1979)
- United States v. Bettenhausen, 499 F.2d 1223, 1226-27 (10th Cir. 1974)