

SUPREME COURT OF INDIANA

Sherwood v. State

749 N.E.2d 36 (Ind. 2001) · No. No. 48S00-9906-CR-363 · Decided May 31, 2001

SUMMARY

The Supreme Court of Indiana reviewed a sentencing order entered after remand in Herschell Sherwood's convictions for murder and conspiracy to commit robbery. The court held that the trial court again improperly considered a prior cocaine arrest and failed to address certain mitigating circumstances. Exercising appellate reweighing, the court ordered concurrent presumptive sentences of 40 years for murder and 10 years for conspiracy to commit robbery.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Sullivan, Justice; Shepard, Chief Justice; Boehm, Justice; Rucker, Justice; Dickson, Justice
JURISDICTION	Indiana
DECIDED	May 31, 2001
DOCKET	No. 48S00-9906-CR-363
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeal from a new sentencing order entered on remand after the Indiana Supreme Court previously affirmed Sherwood's convictions but remanded for resentencing.
STANDARD OF REVIEW	Sentencing decisions are reviewed for abuse of discretion; when a sentencing irregularity is found, the appellate court may remand for clarification or a new sentencing determination, affirm if the error is harmless, or independently reweigh the proper aggravating and mitigating circumstances.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Herschell Sherwood v. State of Indiana

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- standard of review
- remedies

PRACTICE AREAS

criminal law

sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court complied with the Supreme Court's prior remand by adequately considering Sherwood's mitigating evidence.
2. Whether the trial court improperly treated Sherwood's prior cocaine arrest or involvement as criminal conduct and an aggravating circumstance.
3. Whether the Supreme Court should remand for another sentencing determination, affirm the sentence, or independently reweigh the aggravating and mitigating circumstances.
4. What sentences were appropriate after weighing the valid aggravating and mitigating circumstances.

HOLDINGS

1. The trial court's new sentencing order was inadequate because it failed to address Sherwood's claims of a lack of significant criminal history and remorse and did not properly comply with the prior decision's instructions concerning the cocaine evidence.
2. A single arrest does not establish a history of criminal conduct and may not be used as criminal-history evidence to aggravate a sentence; it may be considered only for the limited purpose of showing that subsequent antisocial behavior was not deterred by prior contact with law enforcement, if the trial court makes that rationale clear.
3. When a sentencing irregularity is identified, the appellate court may remand for clarification or a new sentencing determination, affirm if the error is harmless, or independently reweigh the proper aggravating and mitigating circumstances.
4. The valid aggravating circumstance that the crime was heinous and the mitigating circumstance of Sherwood's lack of a significant prior criminal record were approximately balanced, requiring concurrent presumptive sentences of forty years for murder and ten years for conspiracy to commit robbery.

KEY QUOTATIONS

“A single arrest does not establish a history of criminal conduct.” (749 N.E.2d at 39)

“We elect appellate reweighing here.” (749 N.E.2d at 40)

“Weighing the aggravating and mitigating circumstance, we find them in approximate balance and conclude that concurrent presumptive sentences are therefore appropriate.” (749 N.E.2d at 40)

FACTUAL BACKGROUND

On December 13, 1993, Sherwood and an accomplice murdered Jerry Baugh at a car wash while attempting to rob him. Sherwood was convicted of murder and conspiracy to commit robbery. At sentencing, he presented evidence of a previously law-abiding life, personal and family difficulties, good character, lack of violence, the

atypical nature of his participation, and remorse. The trial court relied on several aggravating circumstances, including the seriousness and heinousness of the crime and Sherwood's prior involvement with cocaine.

PROCEDURAL HISTORY

Sherwood was convicted of murder and conspiracy to commit robbery and received consecutive sentences totaling eighty years. In an earlier appeal, the Indiana Supreme Court held that the sentencing order improperly applied an aggravating circumstance, improperly considered the defendant's cocaine involvement, and failed to consider mitigation evidence, and remanded for a new sentencing order. On remand, the trial court left the sentence unchanged and again relied on the cocaine arrest while inadequately addressing mitigation. The Indiana Supreme Court independently reweighed the aggravating and mitigating circumstances and remanded with instructions to impose concurrent presumptive sentences.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court was instructed to impose concurrent sentences of forty years on the murder count and ten years on the conspiracy-to-commit-robbery count.

CASES CITED

- Sherwood v. State, 702 N.E.2d 694, 696-97, 700 (Ind. 1998)
- Morgan v. State, 675 N.E.2d 1067, 1072-73 (Ind. 1996)
- Dumbsky v. State, 508 N.E.2d 1274, 1278 (Ind. 1987)
- Birdsong v. State, 685 N.E.2d 42, 47 (Ind. 1997)
- Tunstill v. State, 568 N.E.2d 539, 545 (Ind. 1991)
- Smith v. State, 675 N.E.2d 693, 697 (Ind. 1996)
- Bivins v. State, 642 N.E.2d 928, 957 (Ind. 1994), cert. denied, 516 U.S. 1077 (1996)
- Baird v. State, 604 N.E.2d 1170, 1182 (Ind. 1992), cert. denied, 510 U.S. 893 (1993)
- Evans v. State, 727 N.E.2d 1072, 1083 (Ind. 2000)