

SUPREME COURT OF ALABAMA

Ex parte Heard

999 So. 2d 978 (Ala. 2003) · No. 1020241 · Decided December 19, 2003

SUMMARY

The Supreme Court of Alabama held that the defendant’s motion for a new trial was properly continued beyond the 60-day period under Alabama Rule of Criminal Procedure 24.4. Because the record reflected the express consent of the prosecutor and the defendant’s attorney, the motion was not denied by operation of law, and the notice of appeal was timely. The court reversed the Court of Criminal Appeals’ dismissal and remanded the case.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Brown, Justice; Houston, Justice; See, Justice; Lyons, Justice; Johnstone, Justice; Harwood, Justice; Woodall, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	December 19, 2003
DOCKET	1020241
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Heard petitioned the Supreme Court of Alabama for a writ of certiorari after the Alabama Court of Criminal Appeals dismissed his appeal as untimely. The Supreme Court granted certiorari, reversed the dismissal, and remanded.
STANDARD OF REVIEW	De novo review applies because the issue is a pure question of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Alabama; precedential.
PARTIES	Rodericus Heard v. State of Alabama

TOPICS

- criminal procedure
- appellate procedure
- final judgment rule
- standard of review

PRACTICE AREAS

- criminal procedure
- appellate procedure
- post-trial motions

QUESTIONS PRESENTED

1. Whether the trial court properly continued Heard's motion for a new trial beyond the sixty-day period under Rule 24.4, Alabama Rules of Criminal Procedure.
2. Whether the Court of Criminal Appeals erred in dismissing Heard's appeal as untimely on the ground that the trial court lacked jurisdiction to enter a later clarification order.

HOLDINGS

1. A continuance of a motion for a new trial beyond Rule 24.4's sixty-day period is valid when the record reflects the express consent of the prosecutor and the defendant or defense counsel and the trial court carries the motion to a date certain. Counsel's representation in an unchallenged motion that the prosecutor consented is sufficient to place that consent in the record.
2. Because the motion for a new trial was validly continued beyond the initial sixty-day period, it was not denied by operation of law on March 13, 2002. Accordingly, Heard's notice of appeal was timely, and the Court of Criminal Appeals erred by dismissing the appeal.

KEY QUOTATIONS

“This, Heard alleges, constitutes the appearance in the record of the prosecution's consent to the continuance for purposes of Rule 24.4, Ala. R.Crim. P. We agree.” (981)

“The express consent of the parties to the continuance does appear in the record of this case, as required by Rule 24.4, Ala. R.Crim. P.” (982)

FACTUAL BACKGROUND

On January 12, 2002, Rodericus Heard was convicted of murder and capital murder and received life sentences, including life without the possibility of parole for capital murder. He filed a motion for a new trial and requested an extension, stating that counsel for the State consented to carrying the motion beyond the sixty-day period. The trial court set the motion for hearing on April 11, 2002, beyond the initial sixty-day deadline, and later clarified that the parties had consented to the continuance. Heard filed his notice of appeal on May 22, 2002.

PROCEDURAL HISTORY

Heard was convicted of murder and capital murder and sentenced to life imprisonment and life imprisonment without the possibility of parole, respectively. He timely filed a motion for a new trial and a motion seeking an extension of the statutory period. The trial court set the motion for hearing beyond the sixty-day period, and later corrected its order to reflect the parties' consent to the continuance. The Court of Criminal Appeals dismissed Heard's appeal as untimely, but the Supreme Court of Alabama held that the continuance was valid under Rule 24.4, Alabama Rules of Criminal Procedure.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Alabama Court of Criminal Appeals was reversed, and the case was remanded for an order or proceedings consistent with the opinion.

CASES CITED

- Heard v. State, 999 So. 2d 975 (Ala. Crim. App. 2002)
- State v. Hill, 690 So. 2d 1201, 1203-04 (Ala. 1996)
- Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003)
- Ex parte Caterpillar, Inc., 708 So. 2d 142 (Ala. 1997)
- Ex parte Hornsby, 663 So. 2d 966 (Ala. 1995)
- Scheilz v. Scheilz, 579 So. 2d 674 (Ala. Civ. App. 1991)
- Simmons v. Simmons, 390 So. 2d 622 (Ala. Civ. App. 1980)
- Ex parte Howlet, 801 So. 2d 30, 33 (Ala. 2000)