

SUPREME COURT OF ARKANSAS

Swindle v. State

373 Ark. 518 (2008) (Ark. 2008) · No. CR 07-1281 · Decided May 29, 2008

SUMMARY

The Supreme Court of Arkansas considered an appeal from an attorney's contempt conviction and 24-hour confinement arising from his failure to request a jury trial at least 48 hours before trial. The court held that the appeal was moot as to the completed contempt sentence but addressed the jury-notice issue under the capable-of-repetition exception. It declared error in the circuit court's practice of requiring defendants to request a jury trial 48 hours before trial because the right is constitutionally guaranteed unless waived in the prescribed manner.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah, Chief Justice
JURISDICTION	Arkansas
DECIDED	May 29, 2008
DOCKET	CR 07-1281
DISPOSITION	other
PROCEDURAL POSTURE	Swindle appealed a circuit-court order holding him in contempt and sentencing him to twenty-four hours' confinement, as well as the denial of his motion for reconsideration. Although he had completed the confinement, the Supreme Court addressed the jury-trial-notice issue under an exception to mootness.
STANDARD OF REVIEW	Mootness was reviewed as a threshold appellate issue; the court reviewed the propriety of the jury-trial notice requirement under the Arkansas Constitution and Arkansas Rules of Criminal Procedure.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Ken Swindle v. State of Arkansas

TOPICS

- criminal procedure
- mootness
- appellate procedure
- constitutional law

PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether Swindle's appeal from the completed contempt sentence was moot.
2. Whether the circuit court could require a defendant to request a jury trial at least forty-eight hours before trial and treat failure to do so as a waiver or basis for contempt.
3. Whether the court should address the jury-trial notice issue under the capable-of-repetition-yet-evading-review exception to mootness.

HOLDINGS

1. The challenge to the propriety of the contempt order was moot because Swindle had completed his twenty-four-hour sentence.
2. A circuit court may not require a defendant to request a jury trial forty-eight hours before trial or assume that the jury-trial right has been waived because the defendant failed to make such a request.
3. The court could review the jury-trial notice issue because the issue was capable of repetition yet evaded review.

KEY QUOTATIONS

“A defendant is not required to request a right to which he or she is already guaranteed.” (205)

“It is not proper for the circuit court to assume that a jury trial is waived due to a defendant's inaction.”
(205)

“Accordingly, we declare error as to the circuit court's use of orders requiring defendants to request a jury trial 48 hours prior to trial.” (205)

FACTUAL BACKGROUND

Ken Swindle represented Juan Lux-Lux in a first-degree forgery case. The circuit court notified Swindle that trial was set for September 10, 2007, and stated that a jury had to be requested at least forty-eight hours before trial or a bench trial or plea would be assumed. Swindle filed motions objecting to the notice and later appeared for trial asserting that a jury had previously been requested, after which the court held him in contempt and imposed twenty-four hours' confinement. Swindle completed the confinement before the appeal was decided.

PROCEDURAL HISTORY

Swindle, defense counsel in a first-degree forgery case, was held in contempt by the Washington County Circuit Court after failing to request a jury trial at least forty-eight hours before the scheduled trial and after making other alleged procedural and courtroom errors. He served the twenty-four-hour sentence and moved for reconsideration, which the circuit court denied. The Supreme Court of Arkansas held the broader contempt challenge moot but reviewed the jury-trial notice practice because it was capable of repetition yet evaded review.

DISPOSITION

other

CASES CITED

- Conlee v. Conlee, 370 Ark. 89, 257 S.W.3d 543 (2007)
- Centr. Emergency Med. Servs., Inc. v. State, 332 Ark. 592, 966 S.W.2d 257 (1998)
- Minge v. Minge, 226 Ark. 262, 289 S.W.2d 189 (1956)
- Delancy v. State, 356 Ark. 259, 151 S.W.3d 301 (2004)
- Owens v. Taylor, 299 Ark. 373, 772 S.W.2d 596 (1989)
- Calnan v. State, 310 Ark. 744, 841 S.W.2d 593 (1992)
- Reaser v. State, 47 Ark. App. 7, 883 S.W.2d 851 (1994)