

SUPREME JUDICIAL COURT OF MAINE

State v. Burdick, 2001 ME 143

782 A.2d 319 (Me. 2001) · Decided October 19, 2001

SUMMARY

The Supreme Judicial Court of Maine affirmed Richard Burdick's attempted-murder conviction and forty-year sentence. The court held that the sentencing court's failure to submit to the jury the aggravating circumstance that the victim was a law enforcement officer constituted Apprendi error, but the error was harmless because the evidence was undisputed and the jury had made the same finding in convicting Burdick of assault on an officer. A concurrence concluded that Apprendi was not implicated because the sentence was within the range authorized for the offense as charged and convicted.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Saufley, J.; Wathen, C.J.; Clifford, J.; Rudman, J.; Dana, J.; Alexander, J.; Calkins, J.
JURISDICTION	Maine
DECIDED	October 19, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a criminal judgment and sentence following a jury conviction for attempted murder and related offenses. The defendant raised an unpreserved constitutional challenge under Apprendi v. New Jersey to the enhanced sentencing provision applied to his attempted-murder sentence.
STANDARD OF REVIEW	Because the Apprendi challenge was not preserved, the court reviewed for obvious error under M.R. Crim. P. 52(b), applying a plain-error-like standard. For the constitutional sentencing error, the court required confidence beyond a reasonable doubt that the error did not affect the defendant's substantial rights.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Maine
PARTIES	Richard R. Burdick v. State of Maine

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QUESTIONS PRESENTED

1. Whether Maine's attempted-murder sentencing provision violated Apprendi by permitting the sentencing court, rather than the jury, to find that the victim was a law enforcement officer acting in the performance of official duties and thereby expose the defendant to life imprisonment.
2. Whether any Apprendi error was structural error requiring automatic reversal.
3. Whether the unpreserved sentencing error constituted obvious error affecting substantial rights or causing manifest injustice.

HOLDINGS

1. When an aggravating circumstance increases the prescribed statutory maximum punishment from a term of years to life imprisonment, the circumstance functions as an element of an aggravated offense and must be submitted to the jury and proved beyond a reasonable doubt.
2. The omission of the single aggravating circumstance from the attempted-murder jury instructions was not structural error requiring automatic reversal.
3. The instructional omission was harmless and did not constitute obvious reversible error because no rational jury could have found otherwise on the omitted aggravating circumstance.

KEY QUOTATIONS

"If the finding that the attempted murder was committed with an aggravating circumstance is used to increase the penalty for the crime beyond the prescribed statutory maximum of a term of years, that fact is not merely a sentencing factor, but effectively becomes the functional equivalent of an element of the 'aggravated' attempted murder offense." (325-326)

"When the claimed error is the omission of a particular instruction, we will vacate the judgment only if 'the record contains evidence that could rationally lead to a contrary finding with respect to the omitted element.'" (328-329)

"Because no rational jury would have concluded otherwise on the element that was not submitted to the jury on the attempted murder charge, the absence of that element did not affect Burdick's substantial rights." (329)

FACTUAL BACKGROUND

Three Hancock County Sheriff's officers went to Burdick's residence to arrest him on an outstanding felony warrant. After retreating upstairs, Burdick fired a .22 magnum handgun twice at Officer Jeffrey McFarland at close range while McFarland was attempting to secure him; McFarland survived because he was wearing a bulletproof vest. The jury convicted Burdick of attempted murder and related offenses, and the sentencing court

imposed a forty-year term after finding that the victim was a law enforcement officer acting in the performance of his duties.

PROCEDURAL HISTORY

A Hancock County Superior Court jury convicted Burdick of attempted murder, aggravated assault, assault on an officer, criminal threatening with a dangerous weapon, and reckless conduct with a dangerous weapon. The court imposed a forty-year sentence for attempted murder and concurrent shorter sentences on the remaining convictions, relying on the fact that the victim was a law enforcement officer. Burdick did not raise the Apprendi issue in the trial court or in his sentence-appeal application. The Supreme Judicial Court reviewed the unpreserved claim for obvious error and affirmed.

DISPOSITION

affirmed

CASES CITED

- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- United States v. Gaudin, 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995)
- In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)
- Jones v. United States, 526 U.S. 227, 251-252, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999)
- State v. Thornton, 485 A.2d 952, 952-953 (Me. 1984)
- Younie v. State, 281 A.2d 446, 448-449 (Me. 1971)
- State v. Dube, 522 A.2d 904, 907 (Me. 1987)
- United States v. Gilliam, 255 F.3d 428, 434 (7th Cir. 2001)
- United States v. Burgos, 254 F.3d 8, 11 (1st Cir. 2001)
- State v. Ilsley, 604 A.2d 17, 18 (Me. 1992)
- State v. Shortsleeves, 580 A.2d 145, 149-150 (Me. 1990)
- United States v. Anderson, 236 F.3d 427, 428 (8th Cir. 2001)
- McMillan v. Pennsylvania, 477 U.S. 79, 88, 106 S. Ct. 2411, 91 L. Ed. 2d 67 (1986)
- United States v. Robinson, 241 F.3d 115, 121 (1st Cir. 2001)
- United States v. Garcia-Guizar, 234 F.3d 483, 488-489 (9th Cir. 2000)
- State v. Child, 1999 ME 198, 743 A.2d 230
- State v. Pomerleau, 363 A.2d 692, 696-698 (Me. 1976)
- United States v. Duarte, 246 F.3d 56, 61-62 (1st Cir. 2001)
- Johnson v. United States, 520 U.S. 461, 468, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997)
- Arizona v. Fulminante, 499 U.S. 279, 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)
- State v. Warren, 1998 ME 136, 711 A.2d 851
- United States v. Nealy, 232 F.3d 825, 829 (11th Cir. 2000)

- In re Joshua B., 2001 ME 115, 776 A.2d 1240
- Neder v. United States, 527 U.S. 1, 7-9, 19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)
- State v. McKeough, 300 A.2d 755, 761 (Me. 1973)
- State v. York, 1997 ME 156, 705 A.2d 692
- State v. Diaz, 681 A.2d 466, 469 (Me. 1996)
- State v. Hassapelis, 620 A.2d 288, 293-294 (Me. 1993)
- State v. Ricker, 2001 ME 76, 770 A.2d 1021
- State v. Hewey, 622 A.2d 1151, 1154-1155 (Me. 1993)
- State v. Goodale, 571 A.2d 228, 229 (Me. 1990)
- State v. Sweet, 2000 ME 14, 745 A.2d 368
- Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993)
- Vasquez v. Hillery, 474 U.S. 254, 106 S. Ct. 617, 88 L. Ed. 2d 598 (1986)
- Waller v. Georgia, 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984)
- McKaskle v. Wiggins, 465 U.S. 168, 104 S. Ct. 944, 79 L. Ed. 2d 598 (1984)
- Gideon v. Wainwright, Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963)
- Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927)