

SUPREME COURT OF KANSAS

State v. Sharkey

299 Kan. 87 (2014) · Decided April 11, 2014

SUMMARY

The Kansas Supreme Court considered whether the trial court erred by denying Tyjuna M. Sharkey's timely pro se motions for a new trial without appointing conflict-free counsel or adequately inquiring into the alleged conflict with trial counsel. The court held that a timely motion for a new trial is a critical stage at which the defendant has a Sixth Amendment right to counsel, and that the trial court abused its discretion by failing to inquire into the apparent conflict. The court remanded for appointment of new counsel and consideration of Sharkey's motions for a new trial.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.
JURISDICTION	Kansas
DECIDED	April 11, 2014
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Sharkey appealed his jury-trial conviction for aggravated indecent liberties with a child, challenging the denial of timely pro se motions for a new trial and appointment of new conflict-free counsel.
STANDARD OF REVIEW	Whether the trial court adequately inquired into a possible conflict of interest is reviewed for abuse of discretion; the trial court abuses its discretion when it makes no inquiry into the nature of the conflict. Because the denial occurred at a critical stage and involved a complete denial of representation, prejudice is presumed under the Cronic exception.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Tyjuna M. Sharkey v. State of Kansas

TOPICS

ineffective assistance

right to counsel

sixth amendment

criminal procedure

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the intent element of aggravated indecent liberties with a child under K.S.A. 21-3504(a)(3)(A) constitutes alternative means requiring substantial competent evidence of each instructed means.
2. Whether a timely posttrial motion for a new trial filed before a direct appeal is a critical stage at which the defendant has a Sixth Amendment right to counsel.
3. Whether the trial court must inquire into a possible conflict of interest and appoint new conflict-free counsel when a defendant's timely new-trial motion alleges ineffective assistance by current counsel.
4. Whether a defendant must demonstrate prejudice to obtain a new hearing when counsel was effectively absent because of a conflict at a critical stage.

HOLDINGS

1. The intent element of K.S.A. 21-3504(a)(3)(A) does not state alternative means, and the court reaffirmed *State v. Britt*.
2. A motion for a new trial filed within the statutory 14-day period and before a direct appeal is a critical stage of the criminal proceedings, and the defendant has a Sixth Amendment right to counsel at the hearing.
3. When a trial court becomes aware of a possible conflict between a felony defendant and defense counsel, including through a timely pro se motion alleging ineffective assistance, the court must inquire into the nature of the conflict. Failure to conduct any inquiry is an abuse of discretion and requires appointment of new conflict-free counsel where warranted.
4. Sharkey was not required to demonstrate case-specific prejudice because the conflict effectively denied him representation at a critical stage; prejudice is presumed under the *Cronic* exception.

KEY QUOTATIONS

“In summary, a motion for new trial filed within the 14-day limitation period in K.S.A. 2013 Supp. 22-3501(1) and before a direct appeal is a critical stage of the criminal proceedings, and a defendant has a Sixth Amendment right to the representation of counsel at a hearing on the motion.” (at 95)

“A district court does not fulfill its obligation to insure a criminal defendant’s right to effective assistance of counsel under the Sixth Amendment to the United States Constitution at sentencing or at a hearing on a motion for new trial by merely providing the defendant with an opportunity to make a pro se statement in lieu of affording him or her the opportunity to have adequate representation from an informed, prepared, and effective attorney.” (at 99)

“Therefore, this case is remanded with instructions to hold a new hearing on Sharkey’s pro se new-trial motions with new conflict-free counsel appointed to argue the motions.” (at 101)

FACTUAL BACKGROUND

Sharkey was convicted of aggravated indecent liberties with a child based on evidence that he sexually assaulted 12-year-old T.W. during a sleepover. After a first conviction was set aside because additional DNA testing identified a possible third contributor, Sharkey was convicted again at a second trial. Seven days after the second verdict, he filed pro se motions alleging that trial counsel had failed to investigate, prepare, present witnesses, explain trial strategy, and adequately represent him. At the hearing, the trial judge asked only whether Sharkey wished to address the court, made limited findings concerning his decision not to testify, and denied the motions without appointing conflict-free counsel.

PROCEDURAL HISTORY

Sharkey was convicted at a second jury trial after the district court granted a new trial following his first conviction because additional DNA testing identified a possible third contributor. Seven days after the second verdict, Sharkey filed pro se motions seeking a new trial and new counsel based on alleged ineffective assistance. The trial court denied the motions without appointing substitute counsel or adequately inquiring into the alleged conflict, then sentenced Sharkey to life imprisonment with a mandatory minimum term of 25 years. The Kansas Supreme Court affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must appoint new conflict-free counsel and hold a new hearing on Sharkey's timely pro se motions for a new trial. If the court denies the motions because it finds no ineffective assistance, no new trial is necessary; if it grants the motions based on ineffective assistance, a new trial must be conducted with trial counsel appointed. The journal-entry issue concerning lifetime electronic monitoring was moot after correction and remained resolved.

CASES CITED

- State v. Wright, 290 Kan. 194, Syl. ¶ 2, 224 P.3d 1159 (2010)
- State v. Nunez, 298 Kan. 661, 316 P.3d 717 (2014)
- State v. Britt, 295 Kan. 1018, 1025-26, 287 P.3d 905 (2012)
- State v. Kelly, 291 Kan. 563, Syl. ¶ 1, 244 P.3d 639 (2010)
- Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012)
- Strickland v. Washington, 466 U.S. 668, 687, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Avery v. Alabama, 308 U.S. 444, 446, 60 S. Ct. 321, 84 L. Ed. 377 (1940)
- State v. Galaviz, 296 Kan. 168, 174, 181-82, 291 P.3d 62 (2012)
- United States v. Williamson, 706 F.3d 405, 416-18 (4th Cir. 2013), cert. denied, 134 S. Ct. 421 (2013)
- McNeil v. Wisconsin, 501 U.S. 171, 175, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991)
- Pennsylvania v. Finley, 481 U.S. 551, 555, 557, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987)
- Evitts v. Lucey, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985)

- Ross v. Moffitt, 417 U.S. 600, 606-07, 94 S. Ct. 2437, 41 L. Ed. 2d 341 (1974)
- Kitchen v. United States, 227 F.3d 1014, 1018-19 (7th Cir. 2000)
- State v. Kirby, 272 Kan. 1170, 1192-96, 39 P.3d 1 (2002)
- State v. Kingsley, 252 Kan. 761, 766-67, 851 P.2d 370 (1993)
- Albright v. State, 292 Kan. 193, 196, 251 P.3d 52 (2011)
- State v. Carter, 284 Kan. 312, 321, 160 P.3d 457 (2007)
- State v. Toney, 39 Kan. App. 2d 1036, 1041-44, 187 P.3d 138 (2008)
- Mickens v. Taylor, 535 U.S. 162, 166-70, 172 n.5, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002)
- State v. Kirdoll, 281 Kan. 1138, Syl. ¶ 8, 136 P.3d 417 (2006)
- State v. Saleem, 267 Kan. 100, 109, 977 P.2d 921 (1999)
- State v. Richardson, 256 Kan. 69, 82, 883 P.2d 1107 (1994)
- United States v. Cronin, 466 U.S. 648, 658-59, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)
- Bell v. Cone, 535 U.S. 685, 697, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002)
- Miller v. Martin, 481 F.3d 468, 472 (7th Cir. 2007)
- Edgar v. State, 294 Kan. 828, 837, 283 P.3d 152 (2012)
- Chamberlain v. State, 236 Kan. 650, 656-57, 694 P.2d 468 (1985)
- Holmes v. State, 292 Kan. 271, 274-75, 252 P.3d 573 (2011)