

SUPREME COURT OF FLORIDA

State v. Witherspoon

810 So. 2d 871 (Fla. 2002) · No. SC01-83 · Decided January 31, 2002

SUMMARY

The Supreme Court of Florida held that the rule in *Tripp v. State* requires credit for time served on an earlier consecutive sentence when probation on a later offense is revoked, even if the newly imposed sentence remains within the sentencing-guidelines range. The court approved the Fifth District Court of Appeal's decision and answered the certified question in the affirmative.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Shaw, J.; Harding, J.; Anstead, J.; Pariente, J.; Lewis, J.; Wells, C.J.; Quince, J.
JURISDICTION	Florida
DECIDED	January 31, 2002
DOCKET	SC01-83
DISPOSITION	approved
PROCEDURAL POSTURE	The State sought review of a Fifth District Court of Appeal decision reversing a probation-revocation sentence and remanding for an award of credit for time previously served. The district court certified a question of great public importance concerning the application of <i>Tripp v. State</i> .
STANDARD OF REVIEW	De novo review of the certified legal question concerning the application of <i>Tripp v. State</i> to sentencing after probation revocation.
PRECEDENTIAL VALUE	Published precedential decision of the Supreme Court of Florida
PARTIES	State of Florida v. Maynard Witherspoon

TOPICS

- sentencing
- probation
- criminal procedure
- appellate procedure
- remedies

PRACTICE AREAS

- criminal procedure
- sentencing
- probation
- appellate procedure
- post-conviction relief

QUESTIONS PRESENTED

1. When a defendant was originally sentenced consecutively on a single scoresheet, does *Tripp v. State* require credit for time served on the first offense when probation on the second offense is revoked, even though the newly imposed sentence does not exceed the sentencing-guidelines maximum?

HOLDINGS

1. When offenses were originally sentenced consecutively on a single scoresheet, *Tripp* requires credit for time served on the first offense against the sentence imposed after revocation of probation on the second offense, even if the newly imposed sentence is within the sentencing-guidelines range.

KEY QUOTATIONS

“Consistent with Hodgdon, we hold that Tripp should be applied notwithstanding the fact that the newly imposed sentence is within the guidelines.” (873)

“both offenses were factors that were weighed in the original sentencing through the use of a single scoresheet and must continue to be treated in relation to each other, even after a portion of the sentence has been violated.” (873)

FACTUAL BACKGROUND

Witherspoon pleaded guilty to armed burglary and attempted armed robbery and was sentenced on May 2, 1991, to twenty years in prison on the burglary count and five years of consecutive probation on the attempted-robbery count. The offenses were sentenced using a single scoresheet, with a permitted sentencing range of twelve to twenty-seven years and a sentencing maximum of forty years after the one-cell bump-up. After serving the prison term and beginning probation, Witherspoon violated probation, and the trial court imposed fifteen years in prison on the attempted-robbery count without credit for time served on the burglary count.

PROCEDURAL HISTORY

Witherspoon pleaded guilty to armed burglary and attempted armed robbery. He received a consecutive twenty-year prison sentence on the burglary count and five years of probation on the attempted-robbery count. After violating probation, he received fifteen years in prison without credit for time served on the burglary count. The Fifth District reversed and remanded for credit, and the Supreme Court of Florida approved that decision and answered the certified question affirmatively.

DISPOSITION

approved

REMAND INSTRUCTIONS

The trial court must award Witherspoon credit for time previously served on count I against the sentence imposed after revocation of probation on count II.

CASES CITED

- Witherspoon v. State, 776 So. 2d 984 (Fla. 5th DCA 2001)
- Tripp v. State, 622 So. 2d 941 (Fla. 1993)
- Hodgdon v. State, 789 So. 2d 958 (Fla. 2001)
- Priester v. State, 711 So. 2d 177 (Fla. 3d DCA 1998)

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