

SUPREME COURT OF SOUTH DAKOTA

State v. Semrad

2011 S.D. 7 (2011) · No. #25658 · Decided February 16, 2011

SUMMARY

The Supreme Court of South Dakota held that parole eligibility advisements are estimates and are not part of a defendant's judicial sentence. Consequently, the Department of Corrections' determination that Scott R. Semrad was required to serve 60% of his six-year sentence, and the circuit court's corrected advisement, did not increase his sentence. The court also held that the statutory discrepancy-notice provision did not apply because Semrad was sentenced under the new system after 1996.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Severson, Justice
JURISDICTION	South Dakota
DECIDED	February 16, 2011
DOCKET	#25658
DISPOSITION	affirmed
PROCEDURAL POSTURE	Semrad appealed from a circuit court judgment following stipulated resentencing, arguing that the corrected parole-eligibility advisement illegally increased his original sentence.
STANDARD OF REVIEW	The court reviewed the legal question whether the parole-eligibility advisements increased the sentence and whether SDCL 23A-27-48 applied to Semrad's sentence.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of South Dakota; precedential.
PARTIES	Scott R. Semrad v. State of South Dakota

TOPICS

- parole
- habeas corpus
- sentencing
- statutory interpretation
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court's initial 35% parole-eligibility estimate was part of Semrad's sentence and therefore controlled over the Department of Corrections' 60% determination.
2. Whether the circuit court's corrected 60% parole-eligibility estimate or the Department of Corrections' determination unlawfully increased Semrad's sentence after he began serving it.
3. Whether SDCL 23A-27-48 required a parole-eligibility estimate by the court or a written discrepancy notice from the Department of Corrections for Semrad, a new-system offender sentenced after July 1, 1996.

HOLDINGS

1. A circuit court's parole-eligibility advisement is an estimate required after sentence is imposed and is not part of the judicial sentence.
2. Neither the Department of Corrections' administrative advisement nor the circuit court's corrected parole-eligibility estimate increased Semrad's six-year sentence.
3. SDCL 23A-27-48 did not apply to Semrad because he was sentenced after July 1, 1996 and was therefore a new-system offender whose parole eligibility was governed by SDCL chapter 24-15A, not chapter 24-15.

KEY QUOTATIONS

“Indeed, parole eligibility could not be part of a judicial sentence because parole is not a judicial power: it is an executive act.” (¶ 7)

“Because parole eligibility is not part of a defendant’s sentence, we have recognized that in other contexts judicial acts delaying parole eligibility do not increase a defendant’s sentence.” (¶ 8)

FACTUAL BACKGROUND

Semrad pleaded nolo contendere to attempted sexual contact with a child under sixteen and received a six-year penitentiary sentence. The circuit court initially estimated that, as a second felony offender, he might be eligible for parole after serving 35% of the sentence, but the Department of Corrections later advised that he would have to serve 60%. Following a stipulated resentencing, the court imposed the same six-year sentence and gave the corrected 60% estimate.

PROCEDURAL HISTORY

Semrad pleaded nolo contendere in 2007 and received a six-year penitentiary sentence. After the Department of Corrections advised him that he would have to serve 60% of the sentence before parole eligibility, rather than the 35% estimate given by the sentencing court, he filed a habeas corpus petition. The parties stipulated to vacate the judgment and resentence him; the circuit court again imposed six years and correctly advised him regarding the 60% parole-eligibility estimate. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Marshek, 2009 S.D. 32, ¶ 10, 765 N.W.2d 743, 746
- State v. Munk, 453 N.W.2d 124, 125 (S.D. 1990)
- State v. Cady, 422 N.W.2d 828, 830 (S.D. 1988)
- Roden v. Solem, 411 N.W.2d 421, 422 (S.D. 1987)
- Boehrns v. S.D. Bd. of Pardons & Paroles, 2005 S.D. 49, ¶ 7, 697 N.W.2d 11, 13
- Turner v. Weber, 2001 S.D. 125, ¶ 8 n.1, 635 N.W.2d 587, 590 n.1
- State v. Puthoff, 1997 S.D. 83, ¶ 7, 566 N.W.2d 439, 442
- State v. Sieler, 1996 S.D. 114, ¶ 13, 554 N.W.2d 477, 481

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