

SUPREME COURT OF SOUTH DAKOTA

State v. Pentecost

2016 S.D. 84 (2016) · No. #27696 · Decided November 30, 2016

SUMMARY

The Supreme Court of South Dakota affirmed John T. Pentecost’s conviction and sentence for second-degree burglary. The court held that whether a defendant is licensed or privileged to enter an occupied structure depends on possession or occupancy and the totality of the circumstances, rather than legal ownership alone. The court also upheld denial of Pentecost’s motion to withdraw his guilty plea and found an adequate factual basis for accepting it.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Kern, Justice; Gilbertson, Chief Justice; Zinter, Justice; Severson, Justice; Wilbur, Justice
JURISDICTION	South Dakota
DECIDED	November 30, 2016
DOCKET	#27696
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an amended judgment of sentence and denial of a motion to set aside a burglary conviction and withdraw a guilty plea after the circuit court resentenced the defendant to reinstate his appellate rights.
STANDARD OF REVIEW	The denial of a motion to withdraw a guilty plea after sentencing is reviewed for abuse of discretion. Whether an adequate factual basis existed for the plea was reviewed under the applicable guilty-plea requirements; the court examined the entire record. The legal issue concerning the meaning of licensed or privileged entry under the burglary statute was reviewed as a statutory and legal question.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	John T. Pentecost v. State of South Dakota

TOPICS

- criminal procedure
- statutory interpretation
- plea bargaining
- appellate procedure
- post-conviction relief

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

plea practice

statutory interpretation

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying Pentecost's motion to dismiss the second-degree burglary charge because he allegedly had a license or privilege to enter the home based on an ownership interest.
2. Whether the circuit court abused its discretion by denying Pentecost's post-sentencing motion to set aside the conviction and withdraw his guilty plea.
3. Whether the circuit court accepted the guilty plea without an adequate factual basis for second-degree burglary.

HOLDINGS

1. A claim of legal title or ownership is not dispositive of whether a defendant is licensed or privileged to enter or remain in an occupied structure. The relevant inquiry is whether the defendant had a possessory or occupancy interest at the time of entry, determined from the totality of the circumstances.
2. A defendant may withdraw a guilty plea after sentencing only to correct manifest injustice, and the circuit court did not abuse its discretion in finding no manifest injustice.
3. The record contained an adequate factual basis for each element of second-degree burglary, and the circuit court properly accepted the guilty plea.

KEY QUOTATIONS

“A claim of legal ownership is not the only dispositive criteria to determine whether an individual has a “license or privilege to enter or remain” under SDCL 22-32-3. Rather, the relevant inquiry under SDCL 22-32-3 is whether the defendant had a possessory or occupancy interest in the premises.” (¶ 22)

“We join the majority of jurisdictions that hold that the question whether a defendant is “licensed or privileged to enter or remain” in an occupied structure hinges on whether the defendant is in possession or control of the premises at the time of entry.” (¶ 35)

FACTUAL BACKGROUND

Pentecost entered the home he had formerly shared with his ex-wife more than a year after he had stopped living there, despite her instructions that he was not welcome. He hired a locksmith to rekey the home and brought bags, clothing, restraint materials, a suicide note, and his Last Will and Testament into the residence; police also found a shotgun and ammunition in his car. Although he claimed a continuing ownership interest because his name remained on the deed, the divorce decree required transfer of his interest and the home was occupied by his ex-wife. He pleaded guilty to second-degree burglary after the court denied his motion to dismiss, later seeking to withdraw the plea.

PROCEDURAL HISTORY

Pentecost was indicted for second-degree burglary and stalking-related offenses. The circuit court denied his pretrial motion to dismiss the burglary charge, and he pleaded guilty to second-degree burglary under a plea agreement in exchange for dismissal of the stalking charge and sentencing-cap allegations. After his initial appeal was dismissed as untimely, he sought habeas relief and moved to withdraw his plea; the circuit court denied the motion and resentenced him. In an earlier appeal, the Supreme Court remanded for findings under SDCL 23A-27-51 concerning denial of his right to appeal. Following remand and resentencing, Pentecost again appealed, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Medicine Eagle, 2013 S.D. 60, ¶ 40, 835 N.W.2d 886, 900
- March v. Thursby, 2011 S.D. 73, ¶ 15, 806 N.W.2d 239, 243
- State v. Wilson, 36 S.D. 416, 155 N.W. 186, 186 (1915)
- People v. Davenport, 268 Cal. Rptr. 501, 505 (Cal. Ct. App. 1990)
- People v. Johnson, 906 P.2d 122, 125 (Colo. 1995)
- Parham v. State, 556 A.2d 280, 285 (Md. 1989)
- State v. Singley, 709 S.E.2d 603 (S.C. 2011)
- State v. Schneider, 673 P.2d 200 (Wash. 1983)
- State v. McMillian, 973 A.2d 287, 292 (N.H. 2009)
- State v. Hagedorn, 679 N.W.2d 666, 669-70, 672 (Iowa 2004)
- State v. Chipps, 2016 S.D. 8, ¶ 39, 874 N.W.2d 475, 489
- State v. Goodwin, 2004 S.D. 75, ¶ 4, 681 N.W.2d 847, 849
- State v. Lemler, 2009 S.D. 86, ¶ 40, 774 N.W.2d 272, 286
- State v. Lohnes, 344 N.W.2d 686, 688 (S.D. 1984)
- State v. Wahle, 521 N.W.2d 134, 137 (S.D. 1994)
- State v. Kvasnicka, 2016 S.D. 2, ¶¶ 17-18, 873 N.W.2d 705, 712-13
- State v. Nachtigall, 2007 S.D. 109, ¶ 5, 741 N.W.2d 216, 219
- State v. Schulz, 409 N.W.2d 655, 658 (S.D. 1987)
- Gregory v. State, 325 N.W.2d 297, 299 (S.D. 1982)
- Gakin v. City of Rapid City, 2005 S.D. 68, ¶ 13, 698 N.W.2d 493, 498
- McDonough v. Weber, 2015 S.D. 1, ¶ 38, 859 N.W.2d 26, 42
- State v. Engelmann, 541 N.W.2d 96, 101 (S.D. 1995)
- North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)