

SUPREME COURT OF NEW JERSEY

State of New Jersey v. Carlos Bolvito

Bolvito · No. A-44-12; 071493 · Decided March 31, 2014

SUMMARY

The Supreme Court of New Jersey held that a Sex Crime Victim Treatment Fund penalty is mandatory for a defendant convicted of a qualifying sex offense, but that the amount may range from a nominal figure to the statutory maximum. In setting the amount, the sentencing court should consider the nature of the offense and the defendant’s ability to pay during incarceration and after release, and must provide a statement of reasons. The court reversed and remanded for reconsideration of the penalty imposed on Carlos Bolvito.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Patterson; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Fernandez-Vina; Judge Cuff (temporarily assigned)
JURISDICTION	New Jersey
DECIDED	March 31, 2014
DOCKET	A-44-12; 071493
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed the amount of a mandatory Sex Crime Victim Treatment Fund penalty imposed at sentencing. The Appellate Division remanded for reconsideration of restitution but otherwise affirmed the sentence. The Supreme Court of New Jersey granted certification limited to whether a sentencing court may consider a defendant's ability to pay when imposing an SCVTF penalty.
STANDARD OF REVIEW	Sentencing determinations are reviewed deferentially for a clear abuse of discretion. Interpretation of the governing statute is reviewed without deference, under established principles of statutory interpretation.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of New Jersey.
PARTIES	Carlos Bolvito v. State of New Jersey

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an SCVTF penalty under N.J.S.A. 2C:14-10 is mandatory when a defendant is convicted of a qualifying sex offense.
2. Whether the statutory amounts in N.J.S.A. 2C:14-10 are ceilings or instead establish minimum and maximum ranges by offense degree.
3. Whether a sentencing court may or should consider a defendant's ability to pay when setting the amount of an SCVTF penalty.
4. Whether the sentencing court must state reasons for the amount of an SCVTF penalty imposed within the statutory range.

HOLDINGS

1. When a defendant is convicted of an offense listed in N.J.S.A. 2C:7-2, the sentencing court must impose an SCVTF penalty and has no discretion to dispense with it.
2. For each offense degree, the amount stated in N.J.S.A. 2C:14-10 is a ceiling, not a floor; a sentencing court may impose any amount from a nominal figure up to the applicable statutory maximum.
3. When setting an SCVTF penalty within the statutory range, the sentencing court should consider both the nature of the offense and the defendant's ability to pay during incarceration and after release, assessing ability to pay over the long term.
4. A sentencing court should provide a statement of reasons when setting an SCVTF penalty within the statutory parameters.

KEY QUOTATIONS

“We further hold that the sentencing court should provide a statement of reasons as to the amount of any penalty imposed pursuant to N.J.S.A. 2C:14-10(a).” (2)

“Here, the “not to exceed” language in N.J.S.A. 2C:14-10 imposes a ceiling, not a floor, on the amount to be assessed as an SCVTF penalty for each degree of offense.” (15)

“When it assesses a defendant’s ability to pay, the sentencing court should look beyond the defendant’s current assets and anticipated income during the period of incarceration.” (18-19)

FACTUAL BACKGROUND

Bolvito sexually assaulted his seven-year-old stepdaughter on two occasions in November 2010 and admitted the sexual contact after receiving Miranda warnings. He pleaded guilty to three predicate sex offenses and received a

twelve-year custodial sentence, parole supervision for life, restitution, and various assessments, including a \$4,000 SCVTF penalty. The sentencing court did not explain how it calculated the SCVTF penalty or consider Bolvito's ability to pay.

PROCEDURAL HISTORY

Bolvito pleaded guilty to first-degree aggravated sexual assault, second-degree sexual assault, and second-degree endangering the welfare of a child. The trial court imposed a \$4,000 SCVTF penalty without stating reasons or identifying the factors used to determine the amount. The Appellate Division rejected his ability-to-pay argument, remanded on restitution, and otherwise affirmed. The Supreme Court reversed and remanded for reconsideration of the SCVTF penalty.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the sentencing court for resentencing limited to reconsideration of the amount of the SCVTF penalty in accordance with the opinion, including consideration of the nature of the offense and defendant's long-term ability to pay and a statement of reasons.

CASES CITED

- State v. Marquez, 202 N.J. 485, 499 (2010)
- Koch v. Dir., Div. of Taxation, 157 N.J. 1, 7 (1999)
- State v. Haliski, 140 N.J. 1, 9 (1995)
- Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587-88 (2013)
- State v. Thomas, 188 N.J. 137, 149-50 (2006)
- Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 325 (2000)
- Maticka v. City of Atlantic City, 216 N.J. Super. 434, 439 (App. Div. 1987)
- State v. Yarbough, 100 N.J. 627, 636-37, 643 (1985), cert. denied, 475 U.S. 1014 (1986)
- State v. Gallagher, 286 N.J. Super. 1, 22-23 (App. Div. 1995), certif. denied, 146 N.J. 569 (1996)
- State v. Malia, 287 N.J. Super. 198, 208 (App. Div. 1996)
- State v. Megargel, 143 N.J. 484, 502 (1996)
- State v. Marshall, 130 N.J. 109, 237 (1992)
- State v. Whitaker, 79 N.J. 503, 512 (1979)
- State v. Blackmon, 202 N.J. 283, 297 (2010)
- State v. Roth, 95 N.J. 334, 364-65 (1984)