

OHIO COURT OF APPEALS, FIFTH APPELLATE DISTRICT, RICHLAND
COUNTY

State v. Patton

2022-Ohio-3567 (Ohio Ct. App. 2022) · No. 2021 CA 0017 · Decided October 6, 2022

SUMMARY

The Fifth District Court of Appeals affirmed Kevin Patton’s convictions and sentence for attempted murder and improperly discharging a firearm at or into a habitation. The court held that Patton forfeited his allied-offenses argument by failing to raise it in the trial court or assert plain error, and concluded that the offenses would not merge in any event because the firearm discharges occurred separately.

CASE DETAILS

COURT	Ohio Court of Appeals, Fifth Appellate District, Richland County
WRITING FOR THE COURT	Craig R. Baldwin, J.; Earle E. Wise, P.J.; John W. Wise, J.
JURISDICTION	Ohio
DECIDED	October 6, 2022
DOCKET	2021 CA 0017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Patton appealed his convictions and sentence, arguing that the trial court erred by sentencing him separately for attempted murder and improperly discharging a firearm at or into a habitation rather than merging those offenses as allied offenses of similar import. Because he did not object to the sentence in the trial court and did not argue plain error on appeal, the court reviewed the claim only under the forfeiture and plain-error framework and declined to create a plain-error argument for him.
STANDARD OF REVIEW	Because Patton failed to object to the sentence or request merger in the trial court, his allied-offenses claim was forfeited and could be reviewed only for plain error. A forfeited error is reversible only if it affected the outcome and correction is necessary to prevent a manifest miscarriage of justice.
PRECEDENTIAL VALUE	published

PARTIES

Kevin Patton v. State of Ohio

TOPICS

sentencing

criminal procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial court plainly erred by failing to merge attempted murder and improperly discharging a firearm at or into a habitation for sentencing as allied offenses of similar import.
2. Whether the appellate court should consider the allied-offenses claim when Patton failed to preserve it in the trial court and did not expressly raise plain error on appeal.

HOLDINGS

1. Failure to seek merger of allied offenses in the trial court forfeits the claim for appellate review, and an appellate court will not independently create a plain-error argument when the appellant does not raise plain error.
2. The offenses did not merge because the evidence supported a finding that they were committed separately: Patton fired three shots at Hackett while Hackett was on the porch and fired a fourth shot later while fleeing from Hackett.

KEY QUOTATIONS

“An accused's failure to raise the issue of allied offenses of similar import in the trial court forfeits all but plain error, and a forfeited error is not reversible error unless it affected the outcome of the proceeding and reversal is necessary to correct a manifest miscarriage of justice.” (¶ 12)

“If any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance—in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, and (3) the offenses were committed with separate animus or motivation.” (¶ 16)

FACTUAL BACKGROUND

Patton confronted Albert Hackett at Hackett's home after objecting to Hackett's relationship with Patton's mother. Patton fired three shots at Hackett while Hackett was on the porch, and then fired a fourth shot farther west as Hackett pursued him down the street. The jury convicted Patton of attempted murder, felonious assault, improperly discharging a firearm at or into a habitation, and having weapons while under disability.

PROCEDURAL HISTORY

Patton was convicted by a jury of attempted murder, felonious assault, improperly discharging a firearm at or into a habitation, and having weapons while under disability. The trial court merged the felonious-assault conviction with attempted murder and imposed an aggregate prison term of twenty-five to thirty and one-half years, plus 813 days. Patton timely appealed, and the Fifth District affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Rogers, 143 Ohio St. 3d 385, 2015-Ohio-2459, 38 N.E.3d 860
- State v. Barnes, 94 Ohio St. 3d 21, 759 N.E.2d 1240
- State v. Long, 53 Ohio St. 2d 91, 372 N.E.2d 804 (1978)
- State v. Carr, 2016-Ohio-9, 57 N.E.3d 262
- State v. Starr, 2016-Ohio-8179
- State v. Quarterman, 140 Ohio St. 3d 464, 2014-Ohio-4034, 19 N.E.3d 900
- State v. Gavin, 2015-Ohio-2996
- Wright v. Ohio Department of Jobs & Family Services, 2013-Ohio-2260
- State v. Ruff, 143 Ohio St. 3d 114, 2015-Ohio-995, 34 N.E.3d 892
- State v. Heatherington, 2022-Ohio-1375