

WASHINGTON SUPREME COURT

State v. Hendrickson

165 Wash. 2d 474 (2009) · Decided January 15, 2009

SUMMARY

The Washington Supreme Court considered whether a trial court properly entered a nunc pro tunc order correcting a dismissal order that appeared to dismiss the defendant’s entire case rather than only the unresolved possession charge. The court held that the error was clerical, the nunc pro tunc order accurately reflected the trial court’s intent, and its entry was not an abuse of discretion.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Stephens, J.; Alexander, C.J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Madsen, J.; Owens, J.; Sanders, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	January 15, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	After conviction on identity-theft counts and an unresolved possession-of-stolen-property count, the trial court entered a nunc pro tunc order clarifying that its earlier dismissal applied only to the possession count. The defendant challenged the order on direct appeal and through a personal restraint petition. The Washington Supreme Court granted review solely on the propriety of the nunc pro tunc order.
STANDARD OF REVIEW	Abuse of discretion. The trial court's exercise of its authority to enter a nunc pro tunc order is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Kevin Hendrickson v. State of Washington

TOPICS

- criminal procedure
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a nunc pro tunc order may correct an order that, because of inartful drafting, failed to accurately record the trial court's action and intention.
2. Whether the trial court lacked jurisdiction to enter the nunc pro tunc order after the earlier order appeared to dismiss the entire case.
3. Whether a clear-and-convincing-evidence standard should govern entry of a nunc pro tunc order.

HOLDINGS

1. A nunc pro tunc order may be used to correct a clerical or ministerial error and make the record reflect an action the trial court actually intended to take and believed it was taking; it may not be used to change the court's mind or correct a judicial error.
2. The trial court did not lack jurisdiction to enter the nunc pro tunc order, and the order would not be set aside on jurisdictional grounds.

KEY QUOTATIONS

“A trial court misuses its nunc pro tunc power and abuses its discretion when it uses such an order to change its mind or rectify a mistake of law. But where the record demonstrates that the court intended to take, and believed it was taking, a particular action only to have that action thwarted by inartful drafting, a nunc pro tunc order stands as a means of translating the court’s intention into an order.” (479-480)

“Because it was a clerical error, a nunc pro tunc order was appropriately entered to reflect the trial court’s intentions and make the record “speak the truth.”” (481)

FACTUAL BACKGROUND

Hendrickson was convicted of several identity-theft counts, while the jury could not reach a unanimous verdict on the possession-of-stolen-property count. After sentencing, the State sought dismissal without prejudice of the unresolved possession count, but the resulting order was drafted so that it appeared to dismiss the entire case. The trial court later entered a nunc pro tunc order clarifying that only the possession count had been dismissed, and defense counsel did not object when given the opportunity.

PROCEDURAL HISTORY

Hendrickson was charged with possession of stolen property and 16 counts of identity theft. Several counts were dismissed, the jury convicted him on the remaining identity-theft counts, and it failed to reach a unanimous verdict on the possession count. After judgment and sentencing, the State obtained an order intended to dismiss only the possession count, but the order appeared to dismiss the entire case; the trial court later entered a nunc pro tunc order correcting the clerical drafting error. The Court of Appeals reversed one identity-theft conviction for ineffective assistance of counsel and affirmed the others but did not address the nunc pro tunc issue. The Washington Supreme Court affirmed the nunc pro tunc order.

DISPOSITION

affirmed

CASES CITED

- Garrett v. Byerly, 155 Wash. 351, 353, 284 P. 343 (1930)
- Martin v. Hadenfeldt, 157 Wash. 563, 289 P. 533 (1930)
- State v. Smissaert, 103 Wn.2d 636, 640-41, 694 P.2d 654 (1985)
- State v. Petrich, 94 Wn.2d 291, 296, 616 P.2d 1219 (1980)
- State v. Ryan, 146 Wash. 114, 116-17, 261 P. 775 (1927)
- Barros v. Barros, 26 Wn. App. 363, 613 P.2d 547 (1980)
- Presidential Estates Apartment Assocs. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)
- State v. Snapp, 119 Wn. App. 614, 626-27, 82 P.3d 252 (2004)
- Schulze v. Or. R.R. & Navigation Co., 41 Wash. 614, 617-18, 84 P. 587 (1906)
- State v. Rosenbaum, 56 Wn. App. 407, 410, 784 P.2d 166 (1989)
- State v. Hendrickson, 138 Wn. App. 827, 832-33, 158 P.3d 1257 (2007)
- State v. Hendrickson, 163 Wn.2d 1045, 187 P.3d 271 (2008)