

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Nicholas Varlas

Varlas · No. 19-0005 · Decided June 11, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia held that, under State v. Eden and the West Virginia Constitution, a defendant who successfully appeals a conviction may not receive a harsher penalty upon reconviction. For purposes of this rule, probation must be considered part of the total criminal penalty, and the court overruled State v. Workman to the extent it conflicted with that holding. The court vacated the Circuit Court of Brooke County's 2018 sentencing order and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Walker; Chief Justice Armstead; Justice Hutchison
JURISDICTION	West Virginia
DECIDED	June 11, 2020
DOCKET	19-0005
DISPOSITION	vacated
PROCEDURAL POSTURE	Nicholas Varlas appealed a circuit court sentencing order entered after his conviction on retrial following a successful appeal. He argued that the court imposed an impermissibly harsher penalty by failing to suspend his term of incarceration in favor of probation as it had done in the original sentencing order.
STANDARD OF REVIEW	Sentencing orders are reviewed under a deferential abuse-of-discretion standard unless the order violates statutory or constitutional commands.
PRECEDENTIAL VALUE	Published binding opinion of the Supreme Court of Appeals of West Virginia; contains original syllabus points and expressly overrules a prior memorandum decision in part.
PARTIES	Nicholas Varlas v. State of West Virginia

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QUESTIONS PRESENTED

1. Whether *State v. Eden* remains valid under the West Virginia Constitution notwithstanding subsequent United States Supreme Court decisions concerning increased punishment after retrial.
2. Whether, for purposes of the *Eden* prohibition on increased penalties after a successful appeal, probation must be treated as part of the defendant's penalty.
3. Whether the circuit court imposed an impermissibly harsher penalty by withholding probation upon Varlas's reconviction and resentencing.

HOLDINGS

1. *State v. Eden* remains valid precedent in West Virginia because it is grounded in the greater due process protections afforded by the West Virginia Constitution, including protection of a defendant's right to appeal.
2. When a defendant successfully appeals a conviction for which probation was granted, *Eden* prohibits the circuit court from imposing a longer term of probation or withholding probation entirely upon reconviction for the same crime or crimes.
3. The circuit court imposed a harsher penalty in violation of *Eden* by failing to suspend Varlas's ten-to-twenty-five-year incarceration sentence in favor of the five years of probation granted in the original sentencing order.

KEY QUOTATIONS

“when a defendant successfully appeals a conviction for which he or she was granted probation, State v. Eden, 163 W. Va. 370, 256 S.E.2d 868 (1979), prohibits a circuit court from imposing a longer term of probation, or withholding probation entirely, when sentencing the defendant upon reconviction at a later trial for the same crime or crimes, post-appeal.” (19-20)

“the essence of an Eden challenge is not the term of incarceration, but rather the total penalty imposed by the sentencing court upon reconviction.” (19)

FACTUAL BACKGROUND

In 2012, Nicholas Varlas hosted a gathering at his home, where he and N.S. later engaged in sexual intercourse after watching a pornographic film. N.S. reported that the intercourse was nonconsensual, and a Brooke County grand jury indicted Varlas for attempted sexual abuse in the first degree and sexual assault in the second degree. After his original convictions were reversed because the circuit court improperly excluded certain text messages, Varlas was reconvicted after a mistrial and a third trial. The original sentence of ten to twenty-five years'

incarceration for sexual assault had been suspended in favor of five years' probation, but the post-appeal sentencing order imposed incarceration without probation.

PROCEDURAL HISTORY

Varlas was convicted in 2014 of attempted sexual abuse in the first degree and sexual assault in the second degree. The Supreme Court of Appeals of West Virginia reversed those convictions in 2016 and remanded for a new trial; a subsequent trial ended in a mistrial, and a third trial in 2018 resulted in the same convictions. The circuit court imposed the same term of incarceration as in 2014 but did not suspend the sentence in favor of probation. The Supreme Court of Appeals vacated the 2018 sentencing order and remanded for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the Circuit Court of Brooke County's December 4, 2018 sentencing order and resentence Varlas consistently with the opinion, including the Eden limitation against imposing a greater total penalty than the original sentence.

CASES CITED

- State v. Lucas, 201 W. Va. 271, 496 S.E.2d 221 (1997)
- State v. Georgius, 225 W. Va. 716, 696 S.E.2d 18 (2010)
- Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979)
- State v. Gwinn, 169 W. Va. 456, 288 S.E.2d 533 (1982)
- State v. Eden, 163 W. Va. 370, 256 S.E.2d 868 (1979)
- State v. Workman, No. 13-0133, 2013 WL 6183989 (Nov. 26, 2013)
- State v. Varlas, 237 W. Va. 399, 787 S.E.2d 670 (2016)
- North Carolina v. Pearce, 395 U.S. 711 (1969)
- Chaffin v. Stynchcombe, 412 U.S. 17 (1973)
- Alabama v. Smith, 490 U.S. 794 (1989)
- Colten v. Kentucky, 407 U.S. 104 (1972)
- State v. McKinley, 234 W. Va. 143, 764 S.E.2d 303 (2014)
- In re T.O., 238 W. Va. 455, 796 S.E.2d 564 (2017)
- Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974)
- Jett v. Leverette, 162 W. Va. 140, 247 S.E.2d 469 (1978)
- State v. Tanner, 229 W. Va. 138, 727 S.E.2d 814 (2012)
- State ex rel. Strickland v. Melton, 152 W. Va. 500, 165 S.E.2d 90 (1968)

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