

NEW YORK COURT OF APPEALS

People v. Santiago

22 N.Y.3d 900 (2013) · Decided October 15, 2013

SUMMARY

The New York Court of Appeals held that the defendant's Pennsylvania conviction could not serve as a predicate felony for second felony offender sentencing because he was 15 years old when convicted and could not have been prosecuted for the equivalent New York offense at that age. The Court also held that the claim was reviewable under the narrow exception to the preservation rule for sentences whose illegality is readily discernible from the trial record. It vacated the second felony offender adjudication and remitted the matter for resentencing, while otherwise affirming.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott; Judge Rivera; Judge Abdus-Salaam
JURISDICTION	New York
DECIDED	October 15, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from an Appellate Division order that declined to review his challenge to his second felony offender adjudication as unpreserved, reversed one of his two sexual abuse convictions in the interest of justice, and otherwise affirmed. The New York Court of Appeals granted leave to appeal.
STANDARD OF REVIEW	The Court applied the exception to New York's preservation rule for sentencing illegality that is readily discernible from the trial record.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum opinion; precedential.
PARTIES	Carlos Santiago, Jr. v. People of the State of New York

TOPICS

- sentencing
- criminal procedure
- preservation of error
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Court of Appeals could review defendant's challenge to the use of his Pennsylvania conviction as a predicate felony despite the lack of a specific objection on that ground at sentencing.
2. Whether a foreign felony conviction obtained when the defendant was 15 years old could qualify as a predicate felony under Penal Law § 70.06(1)(b)(i), when the equivalent New York offense could not have been prosecuted against a 15-year-old.

HOLDINGS

1. A challenge to an enhanced sentence may be reviewed under the narrow exception to New York's preservation rule when the sentence's illegality is readily discernible from the trial record and the relevant facts are undisputed and contained in that record.
2. A foreign conviction of an offense equivalent to a New York felony cannot qualify as a predicate felony under Penal Law § 70.06(1)(b)(i) when the defendant was under the age at which New York permits criminal prosecution for the equivalent offense.

KEY QUOTATIONS

“For those offenses that do not appear in Penal Law § 30.00’s list of exceptions, neither the trial court nor the People have discretion to prosecute an infant defendant; it is simply impermissible.” (904)

FACTUAL BACKGROUND

Defendant was convicted in New York of two counts of first-degree sexual abuse and one count of second-degree unlawful imprisonment. The People sought enhanced sentencing based on defendant's 1993 Pennsylvania conviction for third-degree murder, which occurred when defendant was 15 years old. New York's infancy statute generally prohibits criminal prosecution of persons under 16, and second-degree manslaughter is not among its listed exceptions.

PROCEDURAL HISTORY

A jury convicted defendant of two counts of first-degree sexual abuse and one count of second-degree unlawful imprisonment. County Court adjudicated him a second felony offender based on a 1993 Pennsylvania third-degree murder conviction and imposed consecutive sentences. The Appellate Division declined to reach defendant's age-based predicate-felony challenge, but modified the judgment in the interest of justice by reversing one sexual abuse conviction. The Court of Appeals held that the sentencing challenge was reviewable under an exception to the preservation rule, vacated the second felony offender adjudication, and remitted for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the second felony offender adjudication and remit the matter to Monroe County Court for resentencing; the order is otherwise affirmed.

CASES CITED

- People v. Nieves, 2 N.Y.3d 310, 315-316 (2004)
- People v. Samms, 95 N.Y.2d 52, 55-56 (2000)
- People v. Gonzalez, 61 N.Y.2d 586, 589 (1984)

OPINION

PER CURIAM.

*902OPINION OF THE COURT Memorandum. The order of the Appellate Division should be modified by vacating the second felony offender adjudication and remitting to County Court for resentencing and, as so modified, affirmed.

On May 23, 2008, defendant Carlos Santiago, Jr. was convicted by a jury of two counts of first-degree sexual abuse (Penal Law § 130.65 [1]) and one count of second-degree unlawful imprisonment (Penal Law § 135.05). At the sentencing hearing held on June 30, 2008, the People requested that defendant be sentenced as a second felony offender because of his felony conviction in Pennsylvania in January of 1993 for third-degree murder (see Penal Law § 70.06 [1] [b] [i]; 18 Pa Cons Stat Ann § 2502 [c]).

Pennsylvania law defines third-degree murder as all kinds of murder other than murder in the first degree and murder in the second degree (see 18 Pa Cons Stat Ann § 2502 [c]); and defines first-degree and second-degree murder, in turn, as “an intentional killing,” and a killing “committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony” (18 Pa Cons Stat Ann § 2502 [a], [b]).

Defense counsel objected first that there was no “nexus” between the Pennsylvania felony and the State of New York; second, that defendant was 15 at the time of the Pennsylvania conviction, and “[h]ad he been in New York, he would have been entitled, I believe, to a [youthful offender status], which, of course, he didn’t get in Pennsylvania.” The prosecutor responded simply that “a youthful offender adjudication [was] not mandatory, especially given the nature of the previous conviction.” Observing that the legislature has directed that prior foreign felony convictions are to be considered as predicate felonies for enhanced sentencing, County Court adjudicated defendant a second felony offender.

The judge sentenced him to two consecutive prison terms of seven years for the sexual abuse convictions, and one prison term of one year for the unlawful imprisonment conviction, to be followed by 15 years of post-release supervision.

On appeal, defendant argued that the Pennsylvania conviction could not serve as a predicate felony conviction because he was 15 years old when convicted, and, by virtue of Penal Law § 30.00, a 15 year old cannot be prosecuted for second-degree manslaughter or any other New York offense encompassed by *903the Pennsylvania crime of third-degree murder.* The Appellate Division concluded that “[i]nasmuch as defendant failed to contend before the sentencing court that the Pennsylvania conviction would not constitute a conviction in New York based on his age at the time of the crimes, he failed to preserve his contention for [appellate] review,” and declined to reach it in the interest of justice (96 AD3d 1495, 1497 [4th Dept 2012]).

The Court did, however, modify the judgment as a matter of discretion and in the interest of justice by reversing one of defendant’s two sexual abuse convictions and, as so modified, affirmed. A Judge of this Court subsequently granted defendant leave to appeal (19 NY3d 1105 [2012]).

As an initial matter, we conclude that this case falls within the narrow exception to our preservation rule permitting appellate review when a sentence’s illegality is readily discernible from the trial record (see *People v Nieves*, 2 NY3d 310, 315-316 [2004]).

In *People v Samms* (95 NY2d 52, 55-56 [2000]), we explicitly invoked this exception to review a challenge to an enhanced sentence. There, the defendant was sentenced for the felony serving as a predicate after he committed the crimes underlying the conviction for which he was sentenced as a second violent felony offender.

As the statute plainly requires the opposite chronological sequence, the defendant’s enhanced sentence was unauthorized. Neither the defendant, the People, nor the trial court had noticed the problem, although the relevant dates were in the record and undisputed. Importantly, we remarked that in such a circumstance, there was no need to resort to outside facts, documentation or foreign statutes, and thus the record was sufficient for the exception to apply.

Likewise here, there was no question as to defendant’s date of birth and the date of his conviction for the Pennsylvania crime, both of which appeared in the presentencing report reviewed by both parties and County Court. And at the sentencing hearing *904defense counsel called attention to the fact that defendant was 15 years old when he was convicted in Pennsylvania.

Accordingly, defendant’s claim fits within the exception to preservation described in *Nieves* and *Samms*. Penal Law § 30.00 (1) specifies that a person must be at least 16 years old to be criminally responsible for his conduct. Penal Law § 30.00 (2) lists crimes that are exceptions to this age requirement, but second-degree manslaughter is not among them. So assuming as we must for purposes of this appeal that third-degree murder in Pennsylvania is equivalent to second-degree manslaughter in New York, defendant’s Pennsylvania conviction was not a predicate felony conviction within the meaning of Penal Law § 70.06 (1) (b) (i) because he could not even have been prosecuted for second-degree manslaughter in New York at the age of 15.

The key feature, for purposes of sentence enhancement, is the infancy statute's categorical nature. For those offenses that do not appear in Penal Law § 30.00's list of exceptions, neither the trial court nor the People have discretion to prosecute an infant defendant; it is simply impermissible. This distinguishes infancy from affirmative defenses such as insanity, duress or self-defense in which the defendant must make a showing, as well as youthful offender status where the trial court must make a discretionary determination about a defendant's status at adjudication (see CPL 720.10 [3]).

In short, a prior foreign prosecution of an infant defendant runs afoul of the sentencing enhancement statute's requirement that the prior conviction must be for "an offense for which a sentence to a term of imprisonment in excess of one year... was authorized and is authorized in this state" (Penal Law § 70.06 [1] [b] [i]). Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Order modified by vacating the second felony offender adjudication and remitting to Monroe County Court for resentencing and, as so modified, affirmed, in a memorandum. The parties agree that the statutory elements of Pennsylvania's crime of third-degree murder are equivalent to those of the New York felony offense of second-degree manslaughter (see *People v Gonzalez*, 61 NY2d 586, 589 [1984] [describing the method for determining whether a prior out-of-state conviction is a predicate felony conviction within the meaning of New York's sentencing statutes]).

Accordingly, we assume this to be the case for purposes of this appeal, and express no opinion as to whether, in fact, the elements of Pennsylvania's crime of third-degree murder match those of the New York felony of second-degree manslaughter.