

SUPREME COURT OF FLORIDA

State of Florida v. B.P.

810 So. 2d 918 (Fla. 2002) · No. SC00-1258 · Decided February 14, 2002

SUMMARY

The Supreme Court of Florida held that the denial of counsel to a juvenile at plea and disposition hearings constituted fundamental error. The court approved the Fifth District Court of Appeal's decision and remanded for a proper advisement of the right to counsel, an inquiry into any waiver, and the opportunity to enter a new plea if appropriate.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Quince, J.; Wells, C.J.; Shaw, J.; Harding, J.; Anstead, J.; Pariente, J.; Lewis, J.
JURISDICTION	Florida
DECIDED	February 14, 2002
DOCKET	SC00-1258
DISPOSITION	remanded
PROCEDURAL POSTURE	The State sought review of the Fifth District Court of Appeal's decision holding that a juvenile's claim concerning denial of counsel and failure to obtain a waiver was reviewable on appeal despite the absence of a motion to withdraw the guilty plea.
STANDARD OF REVIEW	The court treated the denial of counsel as fundamental error reviewable on appeal notwithstanding the lack of a motion to withdraw the plea.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; precedential.
PARTIES	State of Florida v. B.P., a child

TOPICS

- right to counsel
- criminal procedure
- appellate procedure
- preservation of error
- constitutional law

PRACTICE AREAS

- juvenile law
- criminal procedure
- appellate procedure
- right to counsel

QUESTIONS PRESENTED

1. Whether a juvenile's claim that the trial court failed to advise him of his right to counsel and failed to obtain a valid waiver under Florida Rule of Juvenile Procedure 8.165 is reviewable on appeal without a motion to withdraw the plea.
2. Whether the denial of counsel at the juvenile plea and disposition proceedings constituted fundamental error requiring remand.

HOLDINGS

1. A juvenile's claim that the trial court failed to advise him of his right to counsel and failed to obtain a waiver as required by Florida Rule of Juvenile Procedure 8.165 is reviewable and correctable on appeal even when the juvenile did not move to withdraw the plea.
2. Because denial of counsel was fundamental error, the case had to be remanded for the trial court to advise B.P. of his right to assistance of counsel, determine through a thorough inquiry whether any waiver was free and intelligent, and permit a new plea if appropriate.

KEY QUOTATIONS

“because the denial of counsel constituted fundamental error.” (919)

“Thus, we remand this case to the trial court so that it can properly advise B.P. of his right to assistance of counsel, ensure by a thorough inquiry that any waiver is free and intelligent, and allow B.P. to enter a new plea if appropriate.” (919)

FACTUAL BACKGROUND

B.P., a juvenile, pleaded guilty to one count of grand theft and one count of resisting an officer without violence. The trial court adjudicated him delinquent and committed him to a Level 8 program. At the plea hearing, B.P. appeared with his probation officer and viewed a video explaining his right to counsel; although a public defender was consulted, the record did not show that counsel was appointed. B.P. also lacked representation at the disposition hearing.

PROCEDURAL HISTORY

B.P. pleaded guilty to grand theft and resisting an officer without violence. The trial court adjudicated him delinquent and committed him to a Level 8 program, although he was not represented by counsel at the plea or disposition hearings and no valid waiver appeared in the record. The Fifth District held that the failure to advise B.P. of his right to counsel as required by Florida Rule of Juvenile Procedure 8.165 was reviewable and correctable on appeal without a motion to withdraw the plea. The Supreme Court of Florida approved that decision and remanded.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must properly advise B.P. of his right to assistance of counsel, conduct a thorough inquiry to ensure that any waiver is free and intelligent, and allow B.P. to enter a new plea if appropriate.

CASES CITED

- B.P. v. State, 759 So. 2d 741 (Fla. 5th DCA 2000)
- T.G. v. State, 741 So. 2d 517 (Fla. 5th DCA 1999)
- State v. T.G., 751 So. 2d 1254 (Fla. 2000)
- State v. T.G., 800 So. 2d 204 (Fla. 2001)