

COURT OF APPEALS OF THE STATE OF NEW YORK

People v. Leon

10 N.Y.3d 122, 884 N.E.2d 1037, 855 N.Y.S.2d 38 (2008) · Decided February 19, 2008

SUMMARY

The New York Court of Appeals affirmed Jose Leon's adjudication as a persistent violent felony offender. The court held that Crawford v. Washington does not apply to predicate sentencing hearings and that fingerprint-comparison reports may be admitted under New York law without confrontation of the report's author. The court also rejected Leon's Apprendi challenge to the sentencing court's determination that he was the person identified in a prior conviction.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Jones, J.; Chief Judge Kaye; Judge Ciparick; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott
JURISDICTION	New York
DECIDED	February 19, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the Appellate Division affirming his adjudication as a persistent violent felony offender and the resulting sentence.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	Jose Leon v. The People of the State of New York

TOPICS

- sentencing
- criminal procedure
- sixth amendment
- hearsay
- statutory interpretation

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- constitutional law
- evidence

QUESTIONS PRESENTED

1. Whether the Sixth Amendment Confrontation Clause, as interpreted by Crawford v. Washington, applies to a persistent violent felony offender sentencing hearing.

2. Whether CPL 400.15 (7) (a) incorporates the trial right of confrontation into a persistent violent felony offender hearing.
3. Whether the sentencing court violated *Apprendi v. New Jersey* by determining Leon's identity as the person previously convicted in 1983.
4. Whether the fingerprint comparison report was admissible and sufficient to establish the predicate violent felony convictions.

HOLDINGS

1. Crawford's Confrontation Clause restrictions on testimonial hearsay do not apply to sentencing proceedings because sentencing proceedings are not trial prosecutions.
2. CPL 400.15 (7) (a)'s requirement that evidence be admissible under the rules applicable to a trial of guilt does not incorporate Crawford's trial-based right of confrontation into a persistent violent felony offender hearing.
3. A sentencing court may determine whether the defendant is the person previously convicted, including the identity-related facts of a prior conviction, without violating *Apprendi*.

KEY QUOTATIONS

"Sentencing proceedings are not trial prosecutions." (125)

"Because, in our view, Crawford does not apply at sentencing proceedings, we decline to construe section 400.15 along with other hearsay statutes, which have always operated in tandem, in a way that yields unworkable results" (125)

"Common sense dictates that these facts are "so basic as to be implicit in the fact of a prior conviction"" (126)

FACTUAL BACKGROUND

Leon was convicted in connection with the sexual abuse of a 13-year-old. At a persistent violent felony offender hearing, the prosecution relied on a report from a public servant who compared fingerprint cards associated with Leon and two prior first-degree manslaughter convictions from 1976 and 1983. Leon admitted he was the person identified in the 1976 conviction but disputed that he was the person identified in the 1983 conviction.

PROCEDURAL HISTORY

Following his conviction for sexual abuse of a 13-year-old, Supreme Court conducted a persistent violent felony offender hearing. The court found that Leon had previously been convicted of two violent felonies and adjudicated him a persistent violent felony offender. The Appellate Division affirmed, concluding that the adjudication rested on admissible evidence and rejecting Leon's constitutional arguments. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Crawford v. Washington, 541 U.S. 36 (2004)
- United States v. Luciano, 414 F.3d 174, 179 (1st Cir. 2005)
- United States v. Martinez, 413 F.3d 239, 243 n. 5 (2d Cir. 2005), cert. denied, 546 U.S. 1117 (2006)
- Matter of Consolidated Edison Co. of N.Y. v. Department of Environmental Conservation, 71 N.Y.2d 186, 195 (1988)
- People v. Rivera, 5 N.Y.3d 61 (2005)
- United States v. Johnson, 440 F.3d 832, 848 (6th Cir. 2006)
- United States v. Thompson, 421 F.3d 278, 284 n. 4 (4th Cir. 2005)
- United States v. Santiago, 268 F.3d 151, 156 (2d Cir. 2001)
- Barber v. Page, 390 U.S. 719, 725 (1968)
- People v. Perry, 36 N.Y.2d 114, 119 (1975)

OPINION

JONES, J.

10 N.Y.3d 122 (2008) 884 N.E.2d 1037 855 N.Y.S.2d 38 THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v. JOSE LEON, Appellant. Court of Appeals of the State of New York. Argued January 3, 2008. Decided February 19, 2008. *123 Center for Appellate Litigation, New York City (Jonathan M. Kirshbaum and Robert S. Dean of counsel), for appellant. *124 Robert M. Morgenthau, District Attorney, New York City (Mark Dwyer of counsel), for respondent.

Chief Judge KAYE and Judges CIPARICK, GRAFFEO, READ, SMITH and PIGOTT concur. OPINION OF THE COURT JONES, J. Defendant Jose Leon's conviction arises out of the sexual abuse of a 13 year old. Supreme Court subsequently conducted a hearing and adjudicated defendant a persistent violent felony offender[1] upon a finding that defendant had previously been convicted of two violent felonies both first-degree manslaughter in 1976, and in 1983.

On this appeal, defendant presses two arguments concerning his sentence. First, defendant contends that Crawford v Washington (541 US 36 [2004]) applies at a predicate sentencing hearing, both as a matter of his Sixth Amendment right to be confronted with the witnesses against him, and by operation of CPL 400.15 (7) *125 (a).[2] In particular, defendant argues that the hearing court violated his right to confront the author of a report certifying that he had compared two fingerprint cards of a "Jose Leon" with two prior convictions (for 1976 and 1983), bearing the identical New York State identification number, and that, in his opinion, the two "fingerprint impressions are those of the same individual." [3] Defendant admitted that he was the same "Jose Leon" identified in the 1976, but not the 1983, conviction.

Second, defendant argues that, in light of his challenge to being the same person identified in the 1983 conviction, the hearing court necessarily made a finding of fact the fact of his identity beyond the sole permissible fact of prior convictions in violation of *Apprendi v New Jersey* (530 US 466 [2000]).

The Appellate Division rejected both arguments, concluding that defendant was properly adjudicated a persistent violent felony offender "on the basis of admissible evidence (see CPL 60.60 [2]; 400.15 [7] [a]; 400.16 [2])" (36 AD3d 538 [2007]) and that his constitutional arguments were meritless.

We now affirm. Sentencing proceedings are not trial prosecutions.[4] Thus, we read *Crawford*, as do the Circuit Courts of Appeals to have considered the question, as addressing "[b]y its own terms" testimonial hearsay at trial (*United States v Luciano*, 414 F3d 174, 179 [1st Cir 2005] [collecting cases]; see also *United States v Martinez*, 413 F3d 239, 243 n 5 [2d Cir 2005], cert denied 546 US 1117 [2006] [collecting cases]).

Similarly, we reject defendant's contention that CPL 400.15 (7) (a) incorporates into his sentencing hearing the trial *126 right of confrontation. Before *Crawford*, there was little doubt that affidavits based on fingerprint comparisons were admissible at predicate sentencing hearings (see CPL 60.60 [2]; CPLR 4520).[5] Section 400.15 (7) (a)'s requirement that evidence be subject to "the rules applicable to a trial of the issue of guilt" dates to 1967 in section 470-a of the former Code of Criminal Procedure.[6] To agree with defendant's broad construction of section 400.15 (7) (a) is to presume too much of the Legislature's intent, given the timing of the enactment of section 60.60 (2).

Testimonial hearsay under section 60.60 (2) continued to be admitted after the passage of section 400.15, both at trial and at predicate felony hearings (although *Crawford* now places new restrictions at trial). Because, in our view, *Crawford* does not apply at sentencing proceedings, we decline to construe section 400.15 along with other hearsay statutes, which have always operated in tandem, in a way that yields unworkable results (see *Matter of Consolidated Edison Co. of N.Y. v Department of Env'tl.*

Conservation, 71 NY2d 186, 195 [1988]). Finally, we have considered defendant's *Apprendi* challenge and find it also to be without merit (see *People v Rivera*, 5 NY3d 61 [2005]; see also *United States v Johnson*, 440 F3d 832, 848 [6th Cir 2006] ["Common sense dictates that these facts are `so basic as to be implicit in the fact of a prior conviction'"]; *United States v Thompson*, 421 F3d 278, 284 n 4 [4th Cir 2005] [same]; *United States v Santiago*, 268 F3d 151, 156 [2d Cir 2001] [a sentencing judge's ability to determine whether a defendant has a prior conviction extends to "the `who, what, when, and where' of a prior conviction"])). *127 Accordingly, the order of the Appellate Division should be affirmed.

Order affirmed. NOTES [1] See Penal Law §§ 70.08, 70.04; see also CPL 400.15 (7) (a); 400.16 (2). [2] CPL 400.15 (7) (a) provides that at a persistent violent felony hearing, "[t]he burden of proof is upon the people and a finding that the defendant has been subjected to a predicate violent felony conviction must be based upon proof beyond a reasonable doubt by evidence admissible under the rules applicable to a trial of the issue of guilt."

[3] CPL 60.60 (2) provides: "A report of a public servant charged with the custody of official fingerprint records which contains a certification that the fingerprints of a designated person who has previously been convicted of an offense are identical with those of a defendant in a criminal action, constitutes presumptive evidence of the fact that such defendant has previously been convicted of such offense."

[4] See *Barber v Page*, 390 US 719, 725 (1968) ("The right [of] confrontation is basically a trial right"); see also *People v Perry*, 36 NY2d 114, 119 (1975) ("neither the Supreme Court nor this court has ever held, nor do we now believe, that the full panoply of constitutional rights should be applied to the sentencing process").

[5] CPL 60.60 was enacted in 1970. Subdivision (2), authorizing the admission of fingerprint comparison reports, has its origins in section 482-b of the former Code of Criminal Procedure, enacted in 1927 (see L 1927, ch 356; see also Denzer, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 60.60, at 345 [1971 ed]). CPLR 4520, in its current form, dates to 1962 (see L 1962, ch 308).

With a minor, irrelevant difference, this rule has origins in former Civil Practice Act § 367. Section 4520 provides: "Where a public officer is required or authorized, by special provision of law, to make a certificate or an affidavit to a fact ascertained, or an act performed, by him in the course of his official duty, and to file or deposit it in a public office of the state, the certificate or affidavit so filed or deposited is prima facie evidence of the facts stated."

[6] See Preiser, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 400.20, at 132-133 (1971 ed) (section 400.20 "restates, in substance, the provisions of former Code section 470-a enacted in 1967... The procedure established was, for the most part, completely new").