

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Benjamin A. Harrison

Harrison · No. 21-0492 · Decided August 31, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Circuit Court of Kanawha County’s resentencing order for convictions of driving under the influence causing death and causing serious bodily injury. The court held that the circuit court’s failure to provide the express warning required by West Virginia Rule of Criminal Procedure 11(e)(2) was harmless error because the plea agreement and colloquy made clear that sentencing remained within the court’s discretion, and there was no indication that the defendant believed he could withdraw his plea.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	August 31, 2022
DOCKET	21-0492
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Kanawha County's order resentencing him following habeas corpus proceedings and imposing consecutive sentences for DUI causing death and DUI causing serious bodily injury.
STANDARD OF REVIEW	The Court considered the applicable standard of review, the parties' briefs, and the record, and reviewed the alleged Rule 11 violation under the harmless-error standard in Rule 11(h).
PRECEDENTIAL VALUE	Memorandum decision; no reporter citation appears in the source.
PARTIES	Benjamin A. Harrison v. State of West Virginia

TOPICS

- plea bargaining
- criminal procedure
- post-conviction relief
- appellate procedure
- harmless error

PRACTICE AREAS

criminal procedure

plea bargaining

appellate procedure

post-conviction relief

QUESTIONS PRESENTED

1. Whether the circuit court's failure to expressly give the Rule 11(e)(2) advisement rendered Harrison's guilty pleas invalid or required reversal.
2. Whether the Rule 11(e)(2) omission was harmless under Rule 11(h) when the plea agreement and colloquy repeatedly informed Harrison that sentencing remained within the circuit court's discretion.

HOLDINGS

1. An omission of the Rule 11(e)(2) advisement is harmless unless there is some realistic likelihood that the defendant labored under the misapprehension that the guilty plea could be withdrawn if the court rejected the State's sentencing recommendation.
2. The circuit court's failure to give the Rule 11(e)(2) advisement was harmless because the record contained no indication that Harrison misunderstood that the court retained discretion over sentencing or that his plea could be withdrawn.

KEY QUOTATIONS

“There is no indication in the record that petitioner “labored under the misapprehension that his plea could be withdrawn,” and we, therefore, find that the circuit court’s omission of the Rule 11 provision is harmless.”
(4)

“However, just as in Valentine, “we refuse to exalt form over substance in Rule 11 hearings.”” (4)

FACTUAL BACKGROUND

Harrison entered guilty pleas to DUI causing death and DUI causing serious bodily injury under a plea agreement in which the State agreed to recommend concurrent sentences, while expressly leaving the ultimate sentence to the circuit court's discretion. During the plea colloquy, Harrison stated that he understood the charges, maximum sentences, plea agreement, and that sentencing was not binding on the court. The written plea also stated that plea bargaining was not binding on the court as to punishment or probation. The circuit court nevertheless failed to expressly advise him under Rule 11(e)(2) that he would have no right to withdraw his plea if the court rejected the State's sentencing recommendation.

PROCEDURAL HISTORY

Harrison pleaded guilty in 2018 pursuant to an agreement under which the State would recommend concurrent sentences, but sentencing remained within the circuit court's discretion. The circuit court imposed consecutive sentences, denied reconsideration, and later denied Harrison's habeas petition without adequate findings. The Supreme Court of Appeals previously reversed and remanded for appropriate findings and, if necessary, a hearing concerning whether Harrison had requested an appeal. After a hearing, the circuit court found that he had requested an appeal, resentenced him to restart the appeal period, and appointed appellate counsel. Harrison appealed the resulting May 24, 2021, order, arguing that the court failed to comply with Rule 11(e)(2).

DISPOSITION

affirmed

CASES CITED

- Harrison v. Straughn, No. 19-1071, 2021 WL 357882 (W. Va. Feb. 2, 2021) (memorandum decision)
- State v. Cabell, 176 W. Va. 272, 342 S.E.2d 240 (1986)
- State v. Stone, 200 W. Va. 125, 488 S.E.2d 400 (1997)
- United States v. Iaquinta, 719 F.2d 83, 85 (4th Cir. 1983)
- State v. Valentine, 208 W. Va. 513, 514, 541 S.E.2d 603, 604 (2000)

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