

SUPREME COURT OF CALIFORNIA

People v. Murphy

25 Cal. 4th 136, 105 Cal. Rptr. 2d 387, 19 P.3d 1129 (2001) · No. S075263 · Decided March 29, 2001

SUMMARY

The Supreme Court of California considered whether a prior conviction for oral copulation with a child under 14 qualified as a strike under the Three Strikes law, whether California Penal Code section 667.71 permitted a separate sentence for each new qualifying conviction, and whether both sentencing schemes applied. The court concluded that the prior conviction was a strike, section 667.71 authorized a separate term for each new qualifying conviction, and both statutes applied in determining the sentence.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of California                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Chin, J.; George, C.J.; Kennard, J.; Baxter, J.; Werdegarr, J.; Brown, J.                                                                                                                                                                                                                                                              |
| JURISDICTION          | California                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | March 29, 2001                                                                                                                                                                                                                                                                                                                         |
| DOCKET                | S075263                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | After a jury convicted defendant of two counts of violating Penal Code section 288, subdivision (a), the trial court imposed consecutive terms of 25 years to life. The Court of Appeal rejected defendant's sentencing arguments but vacated the sentence and remanded for resentencing. The California Supreme Court granted review. |
| STANDARD OF REVIEW    | De novo review of statutory interpretation and sentencing-law questions.                                                                                                                                                                                                                                                               |
| PRECEDENTIAL VALUE    | Published California Supreme Court opinion; binding precedent in California.                                                                                                                                                                                                                                                           |
| PARTIES               | Floyd E. Murphy, Jr. v. The People                                                                                                                                                                                                                                                                                                     |

TOPICS

- sentencing
- statutory interpretation
- criminal procedure
- appellate procedure
- standard of review

## PRACTICE AREAS

criminal law

sentencing

statutory interpretation

appellate procedure

## QUESTIONS PRESENTED

1. Whether Murphy's prior conviction for oral copulation with a child under 14 constituted a serious felony and therefore a strike under the Three Strikes law.
2. Whether Penal Code section 667.71 authorizes a separate 25-years-to-life term for each new qualifying conviction sustained in one proceeding.
3. Whether a defendant meeting the criteria of both the Three Strikes law and Penal Code section 667.71 may be sentenced under both statutes.
4. Whether Penal Code section 654 prohibits applying both recidivist sentencing provisions.
5. Whether the Three Strikes law requires the section 667.71 term to be tripled.

## HOLDINGS

1. A conviction for oral copulation with a child under 14 years of age by a person more than 10 years older than the child is a lewd or lascivious act within Penal Code section 1192.7, subdivision (c)(6), and therefore qualifies as a serious felony and a strike under the Three Strikes law.
2. Penal Code section 667.71 authorizes a separate consecutive sentence of 25 years to life for each new qualifying conviction.
3. A defendant who meets the requirements of both statutes must be sentenced under both the Three Strikes law and Penal Code section 667.71; Penal Code section 654 does not bar their combined application.

## KEY QUOTATIONS

*"We conclude that defendant's prior conviction under section 288a constitutes a strike, that section 667.71 authorizes imposition of a term for each of his new qualifying convictions, and that his sentence for each new conviction should be determined by applying the provisions of both the Three Strikes law and the habitual sexual offender statute."* (at 390)

*"Thus, we conclude that the trial court correctly found defendant's prior conviction under section 288a, subdivision (c), to be a strike under the Three Strikes law."* (at 396)

*"Following Jenkins, we therefore conclude that section 667.71 authorizes separate consecutive sentences of 25 years to life for each of defendant's new convictions."* (at 400)

*"Thus, the Legislature has expressly indicated that where a defendant has a qualifying prior felony conviction, the sentencing provisions of the Three Strikes law not only must be applied, they must be applied in addition to any other punishment provisions."* (at 403)

## FACTUAL BACKGROUND

The information charged Floyd E. Murphy, Jr., with two counts of committing lewd or lascivious acts on a child under 14. It alleged that Murphy had two qualifying prior convictions, one for oral copulation with a child under

14 under Penal Code section 288a, subdivision (c), and one for violating section 288, subdivision (a), and that these convictions made him a habitual sexual offender. Murphy admitted the prior convictions, and the trial court imposed consecutive 25-years-to-life terms under both the Three Strikes law and Penal Code section 667.71.

## PROCEDURAL HISTORY

An information charged two lewd-or-lascivious-act counts and alleged two prior qualifying convictions, including oral copulation with a child under 14 and a section 288 conviction. Defendant admitted the prior convictions after the jury returned guilty verdicts. The trial court imposed an unstayed aggregate sentence of 50 years to life. The Court of Appeal rejected defendant's principal statutory arguments but remanded for resentencing on other matters. The Supreme Court affirmed the Court of Appeal's judgment and remanded for further proceedings consistent with its opinion.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The judgment of the Court of Appeal was affirmed, and the case was remanded to that court for further proceedings consistent with the Supreme Court's opinion, including consideration of consecutive-sentencing and other sentencing issues identified by the Court of Appeal.

## CASES CITED

- People v. Henderson, 195 Cal. App. 3d 1235, 241 Cal. Rptr. 461 (1987)
- White v. Ultramar, Inc., 21 Cal. 4th 563, 572, 88 Cal. Rptr. 2d 19, 981 P.2d 944 (1999)
- Garcia v. McCutchen, 16 Cal. 4th 469, 476, 66 Cal. Rptr. 2d 319, 940 P.2d 906 (1997)
- Lungren v. Deukmejian, 45 Cal. 3d 727, 735, 248 Cal. Rptr. 115, 755 P.2d 299 (1988)
- West Pico Furniture Co. v. Pacific Finance Loans, 2 Cal. 3d 594, 608, 86 Cal. Rptr. 793, 469 P.2d 665 (1970)
- Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222, 230, 110 Cal. Rptr. 144, 514 P.2d 1224 (1973)
- People v. Equarte, 42 Cal. 3d 456, 463-464, 229 Cal. Rptr. 116, 722 P.2d 890 (1986)
- People v. Martinez, 11 Cal. 4th 434, 45 Cal. Rptr. 2d 905, 903 P.2d 1037 (1995)
- People v. Pearson, 42 Cal. 3d 351, 228 Cal. Rptr. 509, 721 P.2d 595 (1986)
- People v. Jenkins, 10 Cal. 4th 234, 40 Cal. Rptr. 2d 903, 893 P.2d 1224 (1995)
- People v. Coronado, 12 Cal. 4th 145, 48 Cal. Rptr. 2d 77, 906 P.2d 1232 (1995)
- People v. Nguyen, 21 Cal. 4th 197, 87 Cal. Rptr. 2d 198, 980 P.2d 905 (1999)
- People v. Benson, 18 Cal. 4th 24, 34, 74 Cal. Rptr. 2d 294, 954 P.2d 557 (1998)
- People v. Dotson, 16 Cal. 4th 547, 554-556, 66 Cal. Rptr. 2d 423, 941 P.2d 56 (1997)
- People v. Superior Court (Romero), 13 Cal. 4th 497, 53 Cal. Rptr. 2d 789, 917 P.2d 628 (1996)
- People v. Deloza, 18 Cal. 4th 585, 600 fn. 10, 76 Cal. Rptr. 2d 255, 957 P.2d 945 (1998)
- People v. DeSimone, 62 Cal. App. 4th 693, 698-700, 73 Cal. Rptr. 2d 73 (1998)

