

INDIANA SUPREME COURT

Fight v. State

768 N.E.2d 881 (Ind. 2002) · No. 19S01-0203-CR-191 · Decided March 22, 2002

SUMMARY

The Indiana Supreme Court granted transfer and held that the statutory limitation on consecutive sentences applied because attempted murder was not listed as a crime of violence under the version of Indiana Code section 35-50-1-2 in effect when the offenses were committed. The court vacated the defendant’s eighty-year sentence and remanded for resentencing, limiting the total term to fifty-five years. The court summarily affirmed the portions of the Court of Appeals decision addressing sufficiency of the evidence and double jeopardy.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Randall T. Shepard, Chief Justice; All Justices concur
JURISDICTION	Indiana
DECIDED	March 22, 2002
DOCKET	19S01-0203-CR-191
DISPOSITION	vacated
PROCEDURAL POSTURE	Following convictions and sentencing in the DuBois Circuit Court, the Indiana Court of Appeals affirmed. The Indiana Supreme Court granted Fight's petition to transfer, vacated the sentence, and remanded for resentencing; it summarily affirmed the portions of the Court of Appeals opinion concerning sufficiency of the evidence and double jeopardy.
STANDARD OF REVIEW	De novo review of the statutory limitation governing consecutive sentences
PRECEDENTIAL VALUE	Published and precedential Indiana Supreme Court opinion
PARTIES	Charles Lee Fight, Jr. v. State of Indiana

TOPICS

- sentencing
- statutory interpretation
- appellate procedure
- criminal procedure
- double jeopardy

PRACTICE AREAS

Criminal law

Criminal procedure

Sentencing

Appellate procedure

QUESTIONS PRESENTED

1. Whether Indiana Code section 35-50-1-2(c) limited the aggregate consecutive sentences imposed for Fight's felony convictions.
2. Whether attempted murder and criminal mischief were crimes of violence under the version of Indiana Code section 35-50-1-2 applicable when Fight committed and was tried for the offenses.
3. Whether the convictions and sentence should otherwise be affirmed on the sufficiency-of-the-evidence and double-jeopardy issues addressed by the Court of Appeals.

HOLDINGS

1. Indiana Code section 35-50-1-2(c) limited the total consecutive terms imposed because the convictions arose out of an episode of criminal conduct and, under the applicable 1998 statute, the offenses were not crimes of violence.
2. The fact that one attempted murder resulted in serious bodily injury did not remove the sentence from the statutory limitation because the serious-bodily-injury language had been repealed and replaced by the statutory list of crimes of violence.
3. The maximum aggregate term authorized under the applicable statute was fifty-five years, the presumptive sentence for a felony one class higher than attempted murder.

KEY QUOTATIONS

"This statute limits a court's authority in imposing consecutive sentences if the convictions are not for "crimes of violence" and the convictions "arise out of an episode of criminal conduct."" (768 N.E.2d at 881)

"Appellant's erroneous sentence is VACATED and the case is REMANDED to the trial court for resentencing consistent with Indiana Code § 35-50-1-2 (1998)." (768 N.E.2d at 881)

FACTUAL BACKGROUND

Following a jury trial, Fight was convicted of three counts of attempted murder and one count of criminal mischief. The trial court imposed forty-year sentences for each attempted-murder conviction and a three-year sentence for criminal mischief, ordering the sentences to produce an aggregate executed term of eighty years. The convictions arose out of an episode of criminal conduct, and one attempted-murder victim suffered serious bodily injury.

PROCEDURAL HISTORY

A jury convicted Fight of three counts of attempted murder and one count of criminal mischief. The trial court imposed an aggregate executed sentence of eighty years, and the Court of Appeals affirmed both the convictions and sentence. On transfer, the Indiana Supreme Court held that the consecutive-sentence limitation in Indiana Code section 35-50-1-2 applied and remanded for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded for resentencing consistent with Indiana Code section 35-50-1-2 (1998). The trial court could hold a new sentencing hearing, with or without additional evidence; order additional briefing; or prepare a new sentencing order without a hearing or additional briefing if deemed unnecessary.

CASES CITED

- Fight v. State, 759 N.E.2d 1131 (Ind. Ct. App. 2001)
- Ellis v. State, 736 N.E.2d 731, 736-37 (Ind. 2000)
- Greer v. State, 684 N.E.2d 1140, 1141-42 (Ind. 1997)

OPINION

PER CURIAM.

IN THE INDIANA SUPREME COURT FIGHT, Charles Lee, Jr., appellant, v. STATE OF INDIANA appellee.))))))) Supreme Court case no. 19S01-0203-CR-191 Court of Appeals case no. 19A01-0103-CR-89 DuBois Circuit Court case no. 19C01-0004-CF-0128 PUBLISHED ORDER This matter comes before the Court on a petition to transfer jurisdiction from the Court of Appeals pursuant to Indiana Appellate Rule 57.

The Court of Appeals affirmed the convictions and sentence in an opinion which is published at Fight v. State, 759 N.E.2d 1131 (Ind. Ct. App. 2001). For the reasons explained below, the petition to transfer is granted and the case remanded to the trial court for resentencing. Following a jury trial, Appellant was convicted of three counts of attempted murder and one count of criminal mischief.

Following submission of evidence on the aggravating and mitigating circumstances, the trial court sentenced Appellant to forty years on each of the three counts of attempted murder (the presumptive sentence plus ten years for aggravating circumstances), and to three years for the criminal mischief conviction (the presumptive sentence plus one and one-half years for aggravating circumstances).

The trial court ordered that two of the attempted murder sentences and the criminal mischief sentence be served concurrently. The third attempted murder sentence, imposed with respect to the victim who had been injured, was ordered to be served consecutively to the others.

Thus, the sentence called for a total executed term of eighty years. Appellant is correct that this sentence violates the statutory limitation on consecutive sentencing in Indiana Code § 35-50-1-2

(1998). This statute limits a court's authority in imposing consecutive sentences if the convictions are not for "crimes of violence" and the convictions "arise out of an episode of criminal conduct."

If both of these circumstances exist, the total executed term is limited to the presumptive sentence of the next higher class of felony. The statute provides in part: [E]xcept for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10 [relating to habitual offender sentences], to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Ind. Code § 35-50-1-2(c). Here, that Appellant's felony convictions "arose out of an episode of criminal conduct" is not disputed. At issue is whether the convictions were for "crimes of violence" as such crimes are defined in subsection (a) of the statute.

As the Court noted in *Ellis v. State*, 736 N.E.2d 731, 736 (Ind. 2000), the statute defines "crimes of violence" by supplying a straightforward list of crimes. Neither attempted murder nor criminal mischief were on the list in 2000 when Appellant committed and was tried for these crimes. See Ind. Code § 35-50-1-2(a) (1998). (The statute was amended, however, in 2001 to include attempted murder as a "crime of violence." See Ind. Code § 35-50-1-2 (2001 Supp.)).

Thus, both circumstances for application of the limitation in Indiana Code § 35-50-1-2 exist here, and the limitation should have been applied. The most serious felony for which Appellant was convicted was attempted murder, a Class A felony.

The presumptive sentence for the felony one class higher than attempted murder, is fifty-five years. *Ellis*, 736 N.E.2d at 737. Therefore, the total term of imprisonment to which Appellant may be sentenced is fifty-five years.

The Court of Appeals acknowledged that attempted murder was not on the statutory "crimes of violence" list, but decided that the limitation on consecutive sentences did not apply because one of the attempted murders resulted in "serious bodily injury." See *Fight*, 759 N.E.2d at 1138-39 (citing *Greer v. State*, 684 N.E.2d 1140 (1997)).

The Court of Appeals' reliance on *Greer* is misplaced. *Greer* construed a previous version of the statute, which exempted from the limitation on consecutive sentences convictions for murder or for a felony which resulted in "serious bodily injury." *Greer*, 684 N.E.2d at 1142 (construing I.C. § 35-50-1-2 (1994)).

As both *Greer* and *Ellis* noted, however, the "serious bodily injury" language was repealed and replaced with the list in the statute applicable to this case. *Ellis*, 736 N.E.2d at 737 n.14; *Greer*,

684 N.E.2d at 1141 n.6. Appellant's erroneous sentence is VACATED and the case is REMANDED to the trial court for resentencing consistent with Indiana Code § 35-50-1-2 (1998).

The trial court may, in its discretion, either: (1) hold a new sentencing hearing, with or without the submission of evidence; (2) direct additional briefing to assist with the preparation of a new sentencing order; or (3) prepare a new sentencing order if no hearing or additional briefing is deemed necessary.

The petition to transfer is GRANTED. The portions of the Court of Appeals opinion relating to the sufficiency of the evidence and double jeopardy are summarily affirmed. See App. R. 58. The Clerk is directed to send a copy of this order to the DeBois Circuit Court; and to counsel of record. Done at Indianapolis, Indiana this 22nd day of March, 2002. s/Randall T. Shepard

Randall T. Shepard Chief Justice of Indiana All Justices concur.