

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Blaney v. Reed

215 W. Va. 220 (2004) · Decided June 18, 2004

SUMMARY

The West Virginia Supreme Court of Appeals denied Jerome M. Blaney's petition for a writ of mandamus or prohibition seeking dismissal of a 19-count indictment. The court held that West Virginia Rule of Criminal Procedure 8(a)(2) did not bar the later indictment because jeopardy had not attached to the offenses in the original indictment. The court therefore denied the writ and dismissed the rule to show cause.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Maynard, Chief Justice
JURISDICTION	West Virginia
DECIDED	June 18, 2004
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original-jurisdiction proceeding seeking a writ of mandamus and/or prohibition to compel a circuit judge to dismiss a nineteen-count indictment for alleged violation of the mandatory-joinder provisions of West Virginia Rule of Criminal Procedure 8(a)(2).
STANDARD OF REVIEW	A writ of mandamus requires a clear legal right to the relief sought, a corresponding legal duty on the respondent, and the absence of another adequate remedy. The court treated the petition as one for mandamus because Judge Reed was named as respondent and dismissal of the indictment was sought.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Jerome M. Blaney v. Jeffrey B. Reed, Judge of the Circuit Court of Wood County

TOPICS

- criminal procedure
- appellate procedure
- writ of certiorari
- remedies
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether West Virginia Rule of Criminal Procedure 8(a)(2) barred prosecution under the second indictment because related offenses had not been joined in the initial indictment.
2. Whether the petitioner had a clear legal right to mandamus relief compelling dismissal of the second indictment.

HOLDINGS

1. When the prosecuting attorney is or should be aware of two or more offenses committed within the same county and based on the same act or transaction, connected acts or transactions, or a common scheme or plan, the offenses must be prosecuted in a single prosecution. Failure to join them bars subsequent prosecution of an omitted offense only if jeopardy attached to an offense in the initial prosecution.
2. Rule 8(a)(2) did not bar prosecution under the August 25, 2003, indictment because no trial occurred under the original indictment and no jury was impaneled and sworn; therefore, jeopardy never attached.

KEY QUOTATIONS

“Accordingly, we now hold that under Rule 8(a)(2) of the West Virginia Rules of Criminal Procedure, when the prosecuting attorney is or should be aware of two or more offenses committed within the same county and which are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan, whether felonies or misdemeanors, all such offenses must be prosecuted in a single prosecution. Failure to unite all such offenses will result in a bar to subsequent prosecution of any offense omitted only if jeopardy attached to any of the offenses in the initial prosecution.”
(215 W. Va. at 224-25)

FACTUAL BACKGROUND

Blaney was initially indicted on six sexual-abuse and abduction counts involving three alleged minor victims. The circuit court dismissed five counts for lack of specificity, and the prosecutor dismissed the remaining count before trial. A later indictment charged nineteen offenses involving two of the alleged victims, and the circuit court dismissed three counts as time-barred while permitting the remaining counts to proceed. Blaney argued that the later indictment violated Rule 8(a)(2)'s mandatory-joinder requirement.

PROCEDURAL HISTORY

A Wood County grand jury returned an initial six-count indictment against Blaney. The circuit court dismissed five counts for lack of specificity, and the prosecutor dismissed the sixth count. A second grand jury returned a nineteen-count indictment, of which the circuit court dismissed three counts on statute-of-limitations grounds but allowed the remainder to stand. Blaney sought extraordinary relief in the Supreme Court of Appeals, which issued a rule to show cause and then denied the writ.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Kucera v. City of Wheeling, 153 W. Va. 538, 170 S.E.2d 367 (1969)
- State ex rel. Watson v. Ferguson, 166 W. Va. 337, 274 S.E.2d 440 (1980)
- State v. Johnson, 197 W. Va. 575, 476 S.E.2d 522 (1996)
- Gilkerson v. Lilly, 169 W. Va. 412, 288 S.E.2d 164 (1982)
- State ex rel. Forbes v. Canady, 197 W. Va. 37, 475 S.E.2d 37 (1996)
- Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981)
- State ex rel. State v. Hill, 201 W. Va. 95, 491 S.E.2d 765 (1997)
- Brooks v. Boles, 151 W. Va. 576, 153 S.E.2d 526 (1967)
- Adkins v. Leverette, 164 W. Va. 377, 264 S.E.2d 154 (1980)
- State v. Hubbard, 201 W. Va. 47, 491 S.E.2d 305 (1997)
- State ex rel. State v. Hill, 201 W. Va. 95, 491 S.E.2d 765 (1997)
- State v. Jenkins, 204 W. Va. 347, 512 S.E.2d 860 (1998)
- State ex rel. Bosley v. Willet, 204 W. Va. 661, 515 S.E.2d 825 (1999)
- State v. Duskey, 178 W. Va. 258, 358 S.E.2d 819 (1987)
- In re Emily, 208 W. Va. 325, 540 S.E.2d 542 (2000)
- Commonwealth v. Bartley, 262 Pa. Super. 390, 396 A.2d 810 (1979)

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