

SUPREME COURT OF ARKANSAS

State v. Joshaway

360 S.W.3d 731 (Ark. 2010) · Decided January 28, 2010

SUMMARY

This document is a dissenting opinion on denial of rehearing in State v. Joshaway. Justice Wills would grant rehearing, concluding that the Arkansas Supreme Court had jurisdiction to review the State’s appeal concerning application of Arkansas Rule of Criminal Procedure 28.2(b) and that the appeal implicated the correct and uniform administration of the criminal law. The dissent also discusses preservation issues and the historical limits on State appeals in criminal cases.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Elana Cunningham Wills; Wills; Gunter; Danielson
JURISDICTION	Arkansas
DECIDED	January 28, 2010
DISPOSITION	other
PROCEDURAL POSTURE	The State sought rehearing after the Supreme Court of Arkansas dismissed its criminal appeal. Justice Wills dissented from the denial of rehearing and would have granted rehearing because the State's appeal allegedly presented a failure to follow the speedy-trial rule requiring review for the correct and uniform administration of the criminal law.
STANDARD OF REVIEW	The opinion addresses the Supreme Court's jurisdiction over a State criminal appeal under Arkansas Rule of Appellate Procedure-Criminal 3 and whether preservation concerns affect that jurisdiction.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	State v. Joshaway

TOPICS

- appellate procedure
- criminal procedure
- speedy trial
- preservation of error
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Supreme Court of Arkansas had jurisdiction under Arkansas Rule of Appellate Procedure-Criminal 3 to hear the State's appeal when the claimed error involved application of a clear speedy-trial rule rather than interpretation of an ambiguous rule.
2. Whether an issue not precisely argued below is relevant to the Supreme Court's jurisdiction over a State appeal or instead constitutes a basis for affirmance.

KEY QUOTATIONS

"The better rule, in my view, is that such issues, although certainly grounds for affirmance, are not relevant to the question of our jurisdiction." (360 S.W.3d 731)

"Because I conclude, for the foregoing reasons, that this court has jurisdiction of the State's appeal in this case, I would grant rehearing." (360 S.W.3d 731)

FACTUAL BACKGROUND

The circuit court allegedly failed to follow Arkansas Rule of Criminal Procedure 28.2(b), concerning the commencement of speedy-trial time after reinstatement of a dismissed charge. The State appealed, but the Supreme Court dismissed the appeal because the rule was sufficiently clear that interpretation was unnecessary. The State argued on rehearing that failure to follow a clear rule itself warranted review under the correct-and-uniform-administration requirement, while acknowledging that it had not argued the precise rule provision below.

PROCEDURAL HISTORY

The circuit court failed to apply Arkansas Rule of Criminal Procedure 28.2(b), which governs when speedy-trial time begins after a charge is dismissed and later reinstated following an appeal. The Supreme Court dismissed the State's appeal in *State v. Joshaway*, 2009 Ark. 595, reasoning that the rule was plain and did not require interpretation. On rehearing, Justice Wills disagreed, concluding that the court had jurisdiction to review the State's appeal and that any preservation problem should support affirmance rather than dismissal for lack of jurisdiction.

DISPOSITION

other

CASES CITED

- *State v. Joshaway*, 2009 Ark. 595
- *State v. Massery*, 302 Ark. 447, 793 S.W.2d 108 (1990)
- *State v. Massey*, 194 Ark. 439, 107 S.W.2d 527 (1937)
- *State v. Edwards*, 310 Ark. 516, 838 S.W.2d 356 (1992)

- State v. Withrow, 47 Ark. 551, 2 S.W. 184 (1886)
- State v. Graham, 1 Ark. 428, 1 Pike 428 (1839)
- State v. Johnson, 374 Ark. 100, 286 S.W.3d 129 (2008)
- State v. Banks, 322 Ark. 344, 909 S.W.2d 634 (1995)
- State v. Grisby, 370 Ark. 66, 257 S.W.3d 104 (2007)

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