

SUPREME COURT OF VERMONT

State v. Tavis, 2009 VT 63

978 A.2d 465 (2009) · No. No. 08-152 · Decided June 12, 2009

SUMMARY

The Vermont Supreme Court considered whether a no-contact condition in a conditions-of-release form became effective while the defendant remained incarcerated. The court held that the form's language made the condition effective only upon release and that the defendant was not adequately advised that the statutory provision applied immediately regardless of custodial status. The court reversed the denial of the defendant's motion to dismiss the violation-of-conditions-of-release charge.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	June 12, 2009
DOCKET	No. 08-152
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed the Addison District Court's denial of his Vermont Rule of Criminal Procedure 12(d) motion to dismiss a charge of violating conditions of release.
STANDARD OF REVIEW	On review of a Rule 12(d) motion to dismiss, the court considers whether the evidence, viewed in the light most favorable to the State and excluding modifying evidence, would fairly and reasonably tend to show beyond a reasonable doubt that the defendant committed the offense.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kirt Tavis v. State of Vermont

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- plain meaning rule
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the no-contact provision in the Conditions of Release form became effective while Tavis was incarcerated or only upon his release.
2. Whether the district court's failure to inform Tavis that the no-contact order applied during incarceration violated 13 V.S.A. § 7554(c) and required dismissal of the violation charge.

HOLDINGS

1. The no-contact provision in the standard Conditions of Release form took effect only upon Tavis's release from custody; it did not prohibit his alleged contacts with the complainant while he was incarcerated.
2. The court's failure to inform Tavis that the no-contact order applied while he was incarcerated violated the notice requirement of 13 V.S.A. § 7554(c), and the resulting lack of fair warning independently supported dismissal of the charge.

KEY QUOTATIONS

“the no-contact provision of the order signed by defendant, taken alone or in context, unambiguously takes effect only upon release.” (¶ 10)

“This error subjected defendant to a conviction for violating an order which, by its own terms, did not prohibit his conduct.” (¶ 12)

FACTUAL BACKGROUND

The Addison District Court issued Tavis a boilerplate Conditions of Release form after arraigning him on domestic-assault charges. The form stated that he would be released upon specified conditions, including a prohibition on contact with the complainant, but Tavis remained incarcerated because he could not post bail. While incarcerated, he allegedly contacted the complainant by telephone and mail. After his release, the State charged him with violating conditions of release, although it did not allege post-release contact.

PROCEDURAL HISTORY

The Addison District Court arraigned Tavis on domestic-assault charges, issued a standard Conditions of Release form, and later released him after striking the bail provision. The State then charged him with violating conditions of release based on alleged contacts with the complainant while he was incarcerated. Tavis moved to dismiss for lack of a prima facie case and inadequate notice; the district court denied the motion. He entered a conditional guilty plea and appealed.

DISPOSITION

reversed

CASES CITED

- State v. Ashley, 161 Vt. 65, 632 A.2d 1368 (1993)
- State v. Baron, 2004 VT 20, 176 Vt. 314, 848 A.2d 275
- State v. Murray, 159 Vt. 198, 617 A.2d 135 (1992)
- State v. Duffy, 151 Vt. 473, 562 A.2d 1036 (1989)
- United States v. Vaccaro, 51 F.3d 189 (9th Cir. 1995)
- State v. Spitsyn, 174 Vt. 545, 811 A.2d 201 (2002) (mem.)
- Stratton v. Cartmell, 114 Vt. 191, 42 A.2d 419 (1945)
- United States v. Gottesman, 122 F.3d 150 (2d Cir. 1997)

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