

SUPREME COURT OF NEW HAMPSHIRE

State v. Furgal, 161 N.H. 206

13 A.3d 272 (2010) · No. No. 2010-439 · Decided November 24, 2010

SUMMARY

The Supreme Court of New Hampshire reviewed a facial due process challenge to RSA 597:1-c, which requires detention without bail for certain life-imprisonment offenses when the proof is evident or the presumption great. The court held that the statute requires the State to bear the burden, does not permit consideration of flight risk or dangerousness as separate factors, does not shift the burden to the defendant, and requires clear and convincing evidence. The court affirmed the denial of bail and upheld the statute's constitutionality.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Dalianis, J.; Hicks, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	November 24, 2010
DOCKET	No. 2010-439
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed the Superior Court's order holding RSA 597:1-c constitutional on its face and denying his request for bail pending trial.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. A facial constitutional challenge requires the challenger to establish that no set of circumstances exists under which the statute would be valid; legislative enactments are presumed constitutional and will not be invalidated except upon inescapable grounds.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Corey Furgal v. State of New Hampshire

TOPICS

- bail
- due process
- statutory interpretation
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

bail

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether RSA 597:1-c, which requires detention without bail when a defendant is charged with an offense punishable by life imprisonment and the proof is evident or the presumption great, is facially consistent with state and federal due process.
2. Whether RSA 597:1-c permits the court to consider individualized factors such as flight risk or dangerousness apart from the strength of the evidence of guilt.
3. Whether the burden of proof shifts to the defendant after the State establishes that the proof is evident or the presumption great.
4. Whether the statute requires the State to prove the defendant's prospective conviction beyond a reasonable doubt or by clear and convincing evidence.
5. What minimum procedural protections are required at a bail hearing under RSA 597:1-c.

HOLDINGS

1. RSA 597:1-c requires the State to show that the defendant is charged with an offense punishable by life imprisonment and that the proof is evident or the presumption great; the statute does not permit the court to separately consider individualized factors such as flight risk or dangerousness.
2. The State bears the burden under RSA 597:1-c, and the statute does not shift that burden to the defendant after the State establishes that the proof is evident or the presumption great.
3. RSA 597:1-c is not facially invalid under the Due Process Clauses of the New Hampshire or United States Constitutions.
4. The State must establish by clear and convincing evidence that the proof is evident or the presumption great before bail may be denied under RSA 597:1-c.
5. At a minimum, a defendant has a right to counsel at a bail hearing under RSA 597:1-c.

KEY QUOTATIONS

“Nothing in the language of the statute permits the court to consider factors such as flight risk or dangerousness, and we will not “add language that the legislature did not see fit to include.” (161 N.H. at 276)

“We conclude that the clear and convincing evidence standard is the standard for determining whether or not the State has shown that the proof is evident or the presumption great.” (161 N.H. at 281)

“Because the Federal Constitution does not provide any greater protection than does the State Constitution with regard to the defendant's due process claims, we reach the same result under the Federal Constitution.” (161 N.H. at 282)

FACTUAL BACKGROUND

In the early morning of November 1, 2009, Christopher Vydfol was stabbed to death in Merrimack. Several witnesses identified Corey Furgal as the assailant, and a grand jury indicted him on alternative counts of second-degree murder. Because the charged offense was punishable by life imprisonment, the State sought to hold Furgal without bail under RSA 597:1-c.

PROCEDURAL HISTORY

Furgal was indicted on alternative counts of second-degree murder after several witnesses identified him as the assailant in a fatal stabbing. The State sought detention without bail under RSA 597:1-c. The Superior Court ruled that the statute was facially constitutional, construed it to permit consideration of flight risk and dangerousness as inherent in the proof analysis, shifted the burden to the defendant after the State's showing, applied a clear-and-convincing-evidence standard, and denied bail. The Supreme Court of New Hampshire affirmed, rejecting the trial court's construction concerning individualized risk factors and burden shifting but upholding the statute and the clear-and-convincing standard.

DISPOSITION

affirmed

CASES CITED

- United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)
- State v. Lamy, 158 N.H. 511, 515, 969 A.2d 451 (2009)
- State v. Jennings, 159 N.H. 1, 3, 973 A.2d 340 (2009)
- State v. Gubitosi, 157 N.H. 720, 727, 958 A.2d 962 (2008)
- Martinez v. Superior Court, In & For County of Pima, 26 Ariz. App. 386, 548 P.2d 1198, 1199 (1976)
- Simpson v. Owens, 207 Ariz. 261, 85 P.3d 478 (App. 2004)
- State v. McNab, 20 N.H. 160, 163-64 (1849)
- State v. Ball, 124 N.H. 226, 231-33, 471 A.2d 347 (1983)
- Ex parte Milburn, 34 U.S. 704, 709, 9 Pet. 704, 9 L. Ed. 280 (1835)
- Application of Corbo, 54 N.J. Super. 575, 149 A.2d 828, 834 (App. Div.), cert. denied, 29 N.J. 465, 149 A.2d 859 (1959)
- Rothgery v. Gillespie County, Tex., 554 U.S. 191, 128 S. Ct. 2578, 2592, 171 L. Ed. 2d 366 (2008)
- Stapleford v. Perrin, 122 N.H. 1083, 1088, 453 A.2d 1304 (1982)
- In re Shelby R., 148 N.H. 237, 239, 804 A.2d 435 (2002)
- Brill v. Gurich, 965 P.2d 404, 408 (Okla. Crim. App. 1998)
- Application of Haynes, 290 Or. 75, 619 P.2d 632, 636 (1980)
- Barker v. Wingo, 407 U.S. 514 (1972)