

SUPREME COURT OF WASHINGTON

State v. Coucil

245 P.3d 222 (Wash. 2010) · No. No. 83654-0 · Decided December 30, 2010

SUMMARY

The Washington Supreme Court held that bail jumping is classified for sentencing purposes according to the classification of the offense pending against the defendant when the defendant fails to appear. Because Coucil was charged with a class C felony at the time he failed to appear, his bail jumping conviction was properly classified as a class C felony despite his later misdemeanor harassment conviction.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Alexander, J.; Barbara A. Madsen, Chief Justice; Charles W. Johnson, Justice; Richard B. Sanders, Justice; Tom Chambers, Justice; Susan Owens, Justice; Mary E. Fairhurst, Justice; James M. Johnson, Justice; Debra L. Stephens, Justice
JURISDICTION	Washington
DECIDED	December 30, 2010
DOCKET	No. 83654-0
DISPOSITION	affirmed
PROCEDURAL POSTURE	Coucil sought review of the Washington Court of Appeals' affirmance of his felony bail-jumping conviction and sentence.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Nikeemia Coucil v. State of Washington

TOPICS

- statutory interpretation
- sentencing
- criminal procedure
- rule of lenity
- appellate procedure

PRACTICE AREAS

- Criminal law
- Criminal procedure
- Statutory interpretation
- Sentencing

QUESTIONS PRESENTED

1. Whether RCW 9A.76.170(3) classifies bail jumping according to the classification of the underlying offense at the time the defendant fails to appear or according to the offense's ultimate disposition or status at sentencing.
2. Whether the statute is ambiguous and therefore subject to the rule of lenity.

HOLDINGS

1. Under RCW 9A.76.170(3), the penalty classification for bail jumping is based on the classification of the offense pending against the defendant when the defendant fails to appear, not on the underlying offense's ultimate disposition.
2. RCW 9A.76.170(3) is not ambiguous on the relevant issue, so the rule of lenity does not require classification of Coucil's bail jumping as a misdemeanor.

KEY QUOTATIONS

"In our view, what the legislature intended when it said "held for, charged with, or convicted of" was that if a person fails to appear when charged with an offense, then the bail jumping classification is based on the charge that was leveled against the defendant at the time the bail jumping took place." (245 P.3d at 225)

"In short, the Court of Appeals correctly concluded that under RCW 9A.76.170(3) the penalty classification for bail jumping is based on the classification of the offense that is pending against the defendant when he or she jumps bail." (245 P.3d at 225)

FACTUAL BACKGROUND

Coucil was charged with felony harassment arising from an incident on a Seattle bus and was released on bail pending trial. He failed to appear for a scheduled pretrial hearing, resulting in a bench warrant, and was arrested four months later. Although he was ultimately acquitted of felony harassment and convicted only of misdemeanor harassment, the trial court classified his bail-jumping conviction as a class C felony because he had been charged with a class C felony when he failed to appear.

PROCEDURAL HISTORY

Coucil was charged with felony harassment, released on bail, and failed to appear for a pretrial hearing. The State amended the information to add bail jumping and malicious harassment. After separate trials, Coucil was acquitted of felony harassment and malicious harassment but convicted of misdemeanor harassment and felony bail jumping. The superior court sentenced him to 17 months for felony bail jumping. The Court of Appeals affirmed, and the Washington Supreme Court affirmed the Court of Appeals.

DISPOSITION

affirmed

CASES CITED

- State v. Coucil, 151 Wash. App. 131, 210 P.3d 1058 (2009)
- State v. Eaton, 168 Wash. 2d 476, 480, 229 P.3d 704 (2010)
- State v. Gonzalez, 168 Wash. 2d 256, 263, 226 P.3d 131 (2010)
- State v. Jacobs, 154 Wash. 2d 596, 600-601, 115 P.3d 281 (2005)
- State v. Williams, 162 Wash. 2d 177, 185, 170 P.3d 30 (2007)

OPINION

PER CURIAM.

245 P.3d 222 (2010) STATE of Washington, Respondent, v. Nikeemia COUCIL, Petitioner. No. 83654-0. Supreme Court of Washington, En Banc. Argued November 16, 2010. Decided December 30, 2010. Jennifer L. Dobson, Attorney at Law, Dana M. Lind, Nielsen Broman & Koch PLLC, Seattle, WA, for Petitioner. Patrick Halpern Hinds, Ann Marie Summers, King County Prosecutor's Office, Seattle, WA, for Respondent.

ALEXANDER, J. ¶ 1 The question before us is this: How should the crime of bail jumping be classified for penalty purposes? The Court of Appeals determined that the penalty classification for bail jumping is based on the classification of the offense the defendant was held for, charged with, or convicted of at the time he or she jumped bail.

We affirm that decision. I ¶ 2 Nikeemia Coucil was charged in King County Superior Court with felony harassment, the charge arising from an incident on a Seattle bus. Coucil was released on bail pending trial and subsequently failed to appear for a scheduled pretrial hearing. This caused the trial court to issue a bench warrant for Coucil's arrest. He was arrested four months later.

The State then amended *223 the information to add the charge of bail jumping for Coucil's failure to appear for the pretrial hearing on the felony harassment charge. It also added a charge of malicious harassment stemming from the bus incident. ¶ 3 For trial purposes, the harassment charges were severed from the bail jumping charge. A jury found Coucil not guilty of felony harassment and malicious harassment but guilty of misdemeanor harassment.

Thereafter, a second jury found Coucil guilty of bail jumping. ¶ 4 At sentencing, the trial court classified the bail jumping conviction as a class C felony based on the jury's determination that Coucil failed to appear at a time when he was charged with felony harassment, also a class C felony. It then sentenced Coucil to 17 months in prison on the bail jumping conviction and imposed a 12-month suspended sentence on the misdemeanor harassment conviction. ¶ 5 Coucil appealed to the Court of Appeals, Division One, primarily arguing that the trial court erred in sentencing him for felony bail jumping when his underlying conviction was for misdemeanor harassment rather than felony harassment.

See *State v. Coucil*, 151 Wash.App. 131, 210 P.3d 1058 (2009), review granted, 168 Wash.2d 1001, 226 P.3d 780 (2010). The Court of Appeals affirmed, holding that the bail jumping statute, RCW 9A.76.170, unambiguously provides that "bail jumping is classified for sentencing purposes according to the nature of the underlying charge at the time the defendant jumps bail, not on the basis of the underlying charge's ultimate disposition."

Coucil, 151 Wash.App. at 133, 210 P.3d 1058. II ¶ 6 We review questions of statutory interpretation de novo. *State v. Eaton*, 168 Wash.2d 476, 480, 229 P.3d 704 (2010). Where the plain words of a statute are unambiguous, our inquiry is at an end. *State v. Gonzalez*, 168 Wash.2d 256, 263, 226 P.3d 131 (2010). If a statute is susceptible to more than one reasonable interpretation, it is ambiguous and, absent legislative intent to the contrary, the rule of lenity requires us to interpret the statute in favor of the defendant.

State v. Jacobs, 154 Wash.2d 596, 600-01, 115 P.3d 281 (2005). Our purpose in interpreting a statute is to determine and carry out the intent of the legislature, and we must presume that it did not intend absurd results. *Eaton*, 168 Wash.2d at 480, 229 P.3d 704. ¶ 7 The bail jumping statute provides in relevant part: (1) Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

(3) Bail jumping is: (c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony; (d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor. RCW 9A.76.170. ¶ 8 Here, there is no dispute over the fact that Coucil knew he (1) was charged with felony harassment, (2) was scheduled to appear in court for a pretrial hearing, and (3) failed to appear for that hearing.

It is also undisputed that Coucil was found guilty of misdemeanor harassment, rather than felony harassment. Based on those facts and the aforementioned statute, Coucil asserts that because his bail jumping offense can be classified as both a misdemeanor and a felony, RCW 9A.76.170(3) is ambiguous.

The ambiguity, he argues, must be resolved in his favor under the rule of lenity. ¶ 9 We agree with the Court of Appeals that Coucil reads ambiguity into the statute where none exists. See *Coucil*, 151 Wash. App. at 133, 210 P.3d 1058.

As the Court of Appeals concluded, any alleged ambiguity vanishes if the offense is classified according to when the bail jumping actually occurred. In reaching this conclusion, the Court of *224 Appeals focused on the statute's use of the disjunctive "or" in the statute that says bail jumping is a class C felony if the person was "held for, charged with, or convicted of" a class B or C felony.

Id. at 135, 210 P.3d 1058 (emphasis added). It reasoned that, under RCW 9A.76.170(3), "a person can be released on bail, and so jump bail, while being simply held for a crime (i.e., prior to arraignment), while charged with a crime (i.e., following arraignment, but prior to trial), or while convicted of a crime (i.e., following trial)." Id. In making its determination about how bail jumping should be classified for punishment purposes, the Court of Appeals interpreted the statute to mean that "a person who, while released on bail, knowingly `fails to appear' for a court hearing `is' guilty of bail jumping, which `is' (at that time) either a class A, B, or C felony, or a gross misdemeanor or misdemeanor, depending on the underlying offense's classification."

Id. (quoting RCW 9A.76.170). ¶ 10 Coucil contends that, by including the phrase "(at that time)" in its explanation, the Court of Appeals erroneously "predicated its conclusion on the insertion of new language into the statute for which there is no textual support." Suppl. Br. of Pet'r at 9.

The Court of Appeals did not, in our view, insert additional language into the text of the statute when it interpreted the statute's meaning. Rather, it included the explanatory parenthetical to illustrate the point that if "the offense is classified according to when it actually occurs when the offender `fails to appear' any ambiguity vanishes." Coucil, 151 Wash.App. at 135, 210 P.3d 1058. ¶ 11 Coucil argues, additionally, that the Court of Appeals overlooked the critical verb, "was," in the statute.

In his opinion, the existence of that word negates any emphasis on the present tense. He points out in this regard that bail jumping is a "class C felony if the person was held for, charged with, or convicted of a class B or class C felony" or a "misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor." RCW 9A.76.170(3)(c)-(d) (emphasis added).

In Coucil's view, the "past tense verb ["was"] might refer to the status of the underlying offense at the time the defendant was released; however, it might also refer to the status at the time of sentencing." Suppl. Br. of Pet'r at 10-11.

We agree with the Court of Appeals that Coucil's interpretation is not reasonable, the text of the statute indicating that bail jumping is to be classified for punishment purposes according to when the person jumped bail. Coucil, 151 Wash. App. at 135, 210 P.3d 1058. ¶ 12 Coucil raises two additional arguments to support his argument that subsection (3) of RCW 9A.76.170 is ambiguous.

He cites to *State v. Williams*, 162 Wash.2d 177, 170 P.3d 30 (2007), as support for the proposition that because the penalty classification for bail jumping is "relevant only to the sentence to be imposed on conviction," it is reasonable to infer that the penalty subsection of RCW 9A.76.170 requires bail jumping classifications to be based on the procedural posture of the underlying offense as it stands at the time of sentencing.

See Suppl. Br. of Pet'r at 7. We disagree that such an inference is reasonable. Contrary to Coucil's assertion, we explained in *Williams* that the charging information was sufficient because it "clearly

stated that Williams was charged with 'Possession of a Controlled Substance, a felony' and as a result, he faced felony bail jumping." Williams, 162 Wash.2d at 185, 170 P.3d 30.

Based on what we said in Williams, it is reasonable to infer that the bail jumping penalty classification depends on when the person jumped bail. Williams is not instructive here for the proposition advanced by Coucil. ¶ 13 Coucil also points out that some other states have, by statute, expressly connected the penalty classifications for bail jumping to the status of the underlying offense at the time the defendant was "released."

Suppl. Br. of Pet'r at 8. He suggests that if the Washington Legislature "intended to connect the penalty classification for bail jumping with the status of the underlying offense at some point prior to sentencing, it would have expressly done so." Id. Pointing to language in bail jumping statutes of other states that are not substantially similar to RCW 9A.76.170(3) does not, in our judgment, support an argument that Washington's statute is ambiguous. *225 ¶ 14 We believe that Coucil's interpretation is unreasonable for additional reasons.

As we have mentioned above, in interpreting a statute we endeavor to determine and carry out the legislature's intent and we presume that it did not intend absurd results. Eaton, 168 Wash.2d at 480, 229 P.3d 704. Under Coucil's reading, a defendant could be subject to a harsher punishment if he or she absconds when charged with a particular offense but is ultimately convicted of a greater offense than with which he or she is charged.

This undercuts Coucil's rule of lenity argument. Additionally, as the Court of Appeals pointed out, Coucil's interpretation is unreasonable from a policy standpoint because it might encourage a defendant to abscond while on bail, gambling that he or she will be convicted of a lower offense.

We agree with the Court of Appeals that the legislature could not have intended such results. In our view, what the legislature intended when it said "held for, charged with, or convicted of" was that if a person fails to appear when charged with an offense, then the bail jumping classification is based on the charge that was leveled against the defendant at the time the bail jumping took place.

The "convicted of" language would come into play only in cases where the defendant failed to appear at sentencing. ¶ 15 Finally, the State raises another concern, which is that if Coucil's interpretation is adopted, it would be impossible to properly instruct the jury on the bail jumping offense unless the underlying offense is litigated first. This is so because it would be impossible to identify the particular crime that Coucil was "'convicted of'" in the charging document if he had not yet been convicted.

Suppl. Br. of Resp't at 9. Again, it would be unreasonable to conclude that the legislature intended this result when it drafted RCW 9A.76.170(3). III ¶ 16 In short, the Court of Appeals correctly concluded that under RCW 9A.76.170(3) the penalty classification for bail jumping is based on the classification of the offense that is pending against the defendant when he or she jumps bail.

Because Coucil was charged with a class C felony when he committed the act of jumping bail, he was properly found guilty of and sentenced for felony bail jumping. We affirm the Court of Appeals. WE CONCUR: BARBARA A. MADSEN, Chief Justice, CHARLES W. JOHNSON, RICHARD B. SANDERS, TOM CHAMBERS, SUSAN OWENS, MARY E. FAIRHURST, JAMES M. JOHNSON, and DEBRA L. STEPHENS, Justices.