

SUPREME COURT OF COLORADO

In re People v. Sir Mario Owens

2018 CO 55 (Colo. 2018) · No. 18SA19 · Decided June 11, 2018

SUMMARY

The Colorado Supreme Court considered whether the public has a constitutional right of access to records sealed in a capital murder post-conviction proceeding. The court held that neither the First Amendment nor Article II, section 10 of the Colorado Constitution guarantees unfettered access to criminal justice records. It affirmed the denial of The Colorado Independent’s motion to unseal the records and discharged the rule.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hart
JURISDICTION	Colorado
DECIDED	June 11, 2018
DOCKET	18SA19
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Colorado Independent sought extraordinary relief under C.A.R. 21 after the Arapahoe County District Court denied its motion to unseal records maintained under seal in a capital murder post-conviction proceeding.
STANDARD OF REVIEW	De novo review applies to constitutional challenges concerning alleged First Amendment and Article II, section 10 violations. The exercise of original jurisdiction under C.A.R. 21 is discretionary.
PRECEDENTIAL VALUE	Published Colorado Supreme Court opinion; precedential
PARTIES	The Colorado Independent v. The District Court for the Eighteenth Judicial District of Colorado

TOPICS

constitutional law first amendment appellate jurisdiction appellate procedure post-conviction relief

PRACTICE AREAS

constitutional law

criminal procedure

public access to court records

appellate procedure

post-conviction relief

QUESTIONS PRESENTED

1. Whether the First Amendment guarantees the public a presumptive right of access to all court records filed in criminal cases.
2. Whether Article II, section 10 of the Colorado Constitution guarantees the public a presumptive right of unfettered access to sealed criminal justice records.
3. Whether the district court erred by denying The Colorado Independent's motion to unseal the records.

HOLDINGS

1. The First Amendment does not establish a general constitutional right of public access to any and all court records in criminal cases, including the sealed records at issue.
2. Article II, section 10 of the Colorado Constitution does not guarantee a sweeping or unfettered public right of access to criminal justice records.
3. The district court did not err in denying The Colorado Independent's motion to unseal the records.

KEY QUOTATIONS

“We decline to conclude here that such unfettered access to criminal justice records is guaranteed by either the First Amendment or Article II, section 10 of the Colorado Constitution.” (§ 1)

“there is no general First Amendment right in the public to access criminal justice records.” (§ 7)

“We affirm the denial of The Colorado Independent’s motion to unseal the subject records and, consequently, discharge the rule.” (§ 10)

FACTUAL BACKGROUND

Sir Mario Owens was convicted of first-degree murder and sentenced to death in 2008. During post-conviction proceedings, Owens alleged that the district attorney had failed to disclose favorable defense evidence, and the trial court issued a protective order sealing portions of the post-conviction motions practice. The Colorado Independent sought public access to those sealed records, asserting constitutional, common-law, and statutory rights of access.

PROCEDURAL HISTORY

Sir Mario Owens was convicted of first-degree murder and sentenced to death in 2008. In 2017, the trial court denied Owens's post-conviction motion and related motion to disqualify the district attorney's office, while maintaining a protective order sealing portions of the post-conviction filings. The Colorado Independent moved to unseal the records, was denied by the district court, and petitioned the Colorado Supreme Court under C.A.R. 21. The supreme court accepted original jurisdiction, affirmed the denial of the motion to unseal, and discharged the rule.

DISPOSITION

affirmed

CASES CITED

- People v. Darlington, 105 P.3d 230, 232 (Colo. 2005)
- Fognani v. Young, 115 P.3d 1268, 1271 (Colo. 2005)
- People v. Bryant, 94 P.3d 624, 625-26 (Colo. 2004)
- Times-Call Publ'g Co. v. Wingfield, 410 P.2d 511, 511-13 (Colo. 1966)
- Cotter v. Bd. of Trustees of Univ. of N. Colo., 971 P.2d 687, 690 (Colo. App. 1998)
- Melton v. City of Oklahoma City, 879 F.2d 706 (10th Cir. 1989), modified on other grounds, 928 F.2d 920 (10th Cir. 1991)
- Kemp v. State Bd. of Agric., 803 P.2d 498 (Colo. 1990)
- Robertson v. Westminster Mall Co., 43 P.3d 622, 625 (Colo. App. 2001)
- Lewis v. Colo. Rockies Baseball Club, Ltd., 941 P.2d 266, 271 (Colo. 1997)
- Lanphere & Urbaniak v. Colorado, 21 F.3d 1508, 1512 (10th Cir. 1994)
- United States v. Hickey, 767 F.2d 705, 709 (10th Cir. 1985)

OPINION

PER CURIAM.

Opinions of the Colorado Supreme Court are available to the public and can be accessed through the Judicial Branch's homepage at <http://www.courts.state.co.us>. Opinions are also posted on the Colorado Bar Association's homepage at <http://www.cobar.org>. ADVANCE SHEET HEADNOTE June 11, 2018 2018 CO 55 No. 18SA19, In re People v. Sir Mario Owens, Constitutional Law — Public Access to Court Records.

In this original proceeding, the supreme court considers and rejects a news organization's contention that a trial court erred in refusing to grant public access to certain records maintained under seal in a capital murder case.

The supreme court emphasizes that, while presumptive access to judicial proceedings is a right recognized under both the state and federal constitutions, neither the United States Supreme Court nor the Colorado Supreme Court has ever held that records filed with a court are treated the same way.

The supreme court thus declines the invitation to hold that unfettered access to criminal justice records is guaranteed by either the First Amendment or Article II, section 10 of the Colorado Constitution. The Supreme Court of the State of Colorado 2 East 14th Avenue • Denver, Colorado 80203 2018 CO 55 Supreme Court Case No. 18SA19 Original Proceeding Pursuant to C.A.R.

21 Arapahoe County District Court Case No. 06CR705 Honorable Christopher Munch, Senior Judge In Re Plaintiff: The People of the State of Colorado, v. Defendant: Sir Mario Owens. Rule Discharged en banc June 11, 2018 Attorneys for Petitioner The Colorado Independent: Ballard Spahr LLP Thomas B. Kelley Steven D. Zansberg Gregory P. Szewczyk Denver, Colorado Attorneys for Respondent The District Court for the Eighteenth Judicial District of Colorado: Cynthia H. Coffman, Attorney General Matthew D. Grove, Assistant Solicitor General Denver, Colorado No appearance on behalf of Plaintiff or Defendant.

JUSTICE HART delivered the Opinion of the Court. ¶1 We accepted jurisdiction in this original proceeding to consider The Colorado Independent’s contention that the Arapahoe County District Court erred in refusing to grant public access to certain records maintained under seal in a capital murder case.

The Colorado Independent contends that the federal and state constitutions grant a presumptive right of access to documents filed in criminal cases. While presumptive access to judicial proceedings is a right recognized under both the state and federal constitutions, neither the United States Supreme Court nor this court has ever held that records filed with a court are treated the same way.

We decline to conclude here that such unfettered access to criminal justice records is guaranteed by either the First Amendment or Article II, section 10 of the Colorado Constitution. I. ¶2 Defendant Sir Mario Owens was convicted of first-degree murder and sentenced to death in 2008.

In 2017, the trial court denied Mr. Owens’s motion for post-conviction relief pursuant to Crim. P. 32.2, as well as his related motion to disqualify the District Attorney’s Office for the 18th Judicial District and to appoint a special prosecutor.

The basis for the motion to disqualify was an allegation that the District Attorney had failed to disclose evidence that would have been favorable to Mr. Owens’s defense. Over Mr. 2 Owens’s objection, the trial court issued a protective order, which remains in place today, sealing portions of the post-conviction motions practice.¹ ¶3 In 2017, The Colorado Independent (“Petitioner”) filed a motion with the district court, asking the court to unseal the records, arguing that public access to the records was required by the First Amendment, Article II, section 10 of the Colorado Constitution, common law, and the Colorado Criminal Justice Records Act.

The district court denied that motion, and Petitioner filed for relief under C.A.R. 21, limiting its request for relief to the argument that presumptive access to judicial records is a constitutional guarantee. II. ¶4 Relief under C.A.R. 21 is an extraordinary remedy limited in purpose and availability. C.A.R. 21; *People v. Darlington*, 105 P.3d 230, 232 (Colo.

2005). Our exercise of original jurisdiction is discretionary. *Fognani v. Young*, 115 P.3d 1268, 1271 (Colo. 2005). We have previously exercised our original jurisdiction to address public access

to court documents. See, e.g., *People v. Bryant*, 94 P.3d 624, 625–26 (Colo. 2004); *Times-Call Publ’g Co. v. Wingfield*, 410 P.2d 511, 511–12 (Colo. 1966).

Here, we do so once again. 1Mr. Owens filed a C.A.R. 21 petition with this court in March 2017 seeking to have the protective order vacated. We declined to issue a rule to show cause. See Order of Court, *In re People v. Owens*, No. 17SA59 (Colo. Apr. 7, 2017). 3 ¶5 Because the availability of First Amendment protection presents a legal question, we review such challenges de novo.

See *Cotter v. Bd. of Trustees of Univ. of N. Colo.*, 971 P.2d 687, 690 (Colo. App. 1998) (citing *Melton v. City of Oklahoma City*, 879 F.2d 706 (10th Cir. 1989), modified on other grounds, 928 F.2d 920 (10th Cir. 1991), and *Kemp v. State Bd. of Agric.*, 803 P.2d 498 (Colo. 1990)). De novo review is also appropriate for alleged violations of Article II, section 10 of the Colorado Constitution.

See *Robertson v. Westminster Mall Co.*, 43 P.3d 622, 625 (Colo. App. 2001) (citing *Lewis v. Colo. Rockies Baseball Club, Ltd.*, 941 P.2d 266, 271 (Colo. 1997)). ¶6 Here, we reject Petitioner’s constitutional arguments for mandatory disclosure of the records sealed in this matter. ¶7 We find no support in United States Supreme Court jurisprudence for Petitioner’s contention that the First Amendment provides the public with a constitutional right of access to any and all court records in cases involving matters of public concern.

Petitioner cites none. The Tenth Circuit has more than once declined to recognize a First Amendment right of access to court records. See, e.g., *Lanphere & Urbaniak v. Colorado*, 21 F.3d 1508, 1512 (10th Cir. 1994) (“[T]here is no general First Amendment right in the public to access criminal justice records.”); *United States v. Hickey*, 767 F.2d 705, 709 (10th Cir.

1985) (distinguishing between the acknowledged right of the public and press to attend trial proceedings and a claimed of right to access court files). 4 ¶8 Moreover, we have never recognized any such constitutional right—whether under the First Amendment or Article II, section 10 of the Colorado Constitution. Petitioner’s near-exclusive reliance on this court’s opinion in *Wingfield* is misplaced.

In *Wingfield*, we analyzed a statutory prohibition against the inspection of court records in pending cases by non-parties. See 410 P.2d at 512. We concluded that while no “absolute right to examine” court records exists, inspection may be permitted “at the discretion of the court.” *Id.* at 513. Contrary to Petitioner’s assertion, this court did not hold in *Wingfield* that limiting access to court records violates the First Amendment.

See *id.* We decline to do so now in the absence of any indication from the nation’s high court that access to all criminal justice records is a constitutionally guaranteed right belonging to the public at large. ¶9 We also see no compelling reason to interpret our state constitution as guaranteeing

such a sweeping—and previously unrecognized—right of unfettered access to criminal justice records.

On the contrary, such a ruling would do violence to the comprehensive open records laws and administrative procedures currently in place—including, but not limited to, the Colorado Criminal Justice Records Act, §§ 24-72-301 to -309, C.R.S.

(2017)—that are predicated upon the absence of a constitutionally guaranteed right of access to criminal justice records. III. ¶10 We affirm the denial of The Colorado Independent’s motion to unseal the subject records and, consequently, discharge the rule. 5