

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Belak, 573 Pa. 414

825 A.2d 1252 (2003) · Decided June 17, 2003

SUMMARY

The Supreme Court of Pennsylvania held that the mandatory sentencing provision in 42 Pa.C.S. § 9714(a)(2), requiring at least 25 years’ imprisonment for certain repeat violent offenders, was severable from and not invalidated by the unconstitutional presumption in § 9714(a)(1). The court reinstated George Belak’s judgment of sentence and dismissed his ineffective-assistance claims without prejudice to pursuing them under the Post-Conviction Relief Act.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Nigro; Chief Justice Zappala; Justice Cappy; Justice Castille; Justice Newman; Justice Saylor; Justice Eakin
JURISDICTION	Pennsylvania
DECIDED	June 17, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Cross-petitions for allowance of appeal from the Superior Court's second decision, which rejected Belak's ineffective-assistance claims but vacated his judgment of sentence and remanded for resentencing under Commonwealth v. Butler.
STANDARD OF REVIEW	De novo review of the statutory and constitutional sentencing issue; ineffective-assistance claims were dismissed without merits review because they were subject to the rule requiring such claims generally to be raised on collateral review.
PRECEDENTIAL VALUE	published precedential decision of the Supreme Court of Pennsylvania
PARTIES	Commonwealth of Pennsylvania v. George R. Belak

TOPICS

- sentencing
- post-conviction relief
- ineffective assistance
- due process
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Belak's ineffective-assistance-of-trial-counsel claims should be decided on direct appeal or dismissed without prejudice to collateral review under *Commonwealth v. Grant*.
2. Whether *Commonwealth v. Butler*, which invalidated the burden-shifting presumption in 42 Pa.C.S. § 9714(a)(1), required vacatur and resentencing where Belak was sentenced under § 9714(a)(2).
3. Whether § 9714(a)(2) is severable from § 9714(a)(1) and remains constitutional after § 9714(a)(1) was held unconstitutional.
4. Whether Belak's Apprendi sentencing argument could be considered when raised for the first time in his reply brief.

HOLDINGS

1. Under *Commonwealth v. Grant*, a petitioner generally must wait to raise claims of ineffective assistance of trial counsel until collateral review; because Belak's case was on direct appeal when *Grant* was decided and lacked an evidentiary record and trial-court opinion addressing the claims, his claims were dismissed without prejudice to presentation in a PCRA petition.
2. *Commonwealth v. Butler* did not require resentencing because Belak was sentenced under 42 Pa.C.S. § 9714(a)(2), not § 9714(a)(1). Subsection (a)(2) does not impose a presumption or place a burden on the defendant to prove that he is not a high-risk dangerous offender.
3. Section 9714(a)(2) is severable from § 9714(a)(1) and is not unconstitutional merely because § 9714(a)(1) was held unconstitutional in *Butler*.
4. The court declined to consider Belak's Apprendi argument because he raised it for the first time in his reply brief and had not included it in his petition for allowance of appeal or initial brief.

KEY QUOTATIONS

“as a general rule, a petitioner should wait to raise claims of ineffective assistance of trial counsel until collateral review.” (825 A.2d at 1255)

“Rather, section 9714(a)(2) effectively places the burden on the Commonwealth to show that the offender has been convicted of three crimes of violence, a burden that the Commonwealth clearly met here.” (825 A.2d at 1256)

“section 9714(a)(2) is clearly independent of and separable from the invalid section 9714(a)(1).” (825 A.2d at 1257)

FACTUAL BACKGROUND

George Belak was convicted of burglary and related offenses. He had previously been convicted of at least three crimes of violence, including burglaries, and was sentenced to twenty-five to fifty years' imprisonment under 42 Pa.C.S. § 9714(a)(2). At sentencing, Belak stipulated to the relevant prior convictions and to the presence of

persons during the burglaries. The trial court nevertheless considered whether he qualified as a high-risk dangerous offender, a concept associated with subsection (a)(1).

PROCEDURAL HISTORY

Belak was convicted of burglary and related offenses and received a mandatory minimum sentence of twenty-five years and a mandatory maximum sentence of fifty years under 42 Pa.C.S. § 9714. The Superior Court initially affirmed, withdrew that opinion after *Commonwealth v. Butler*, and then vacated the sentence and remanded for resentencing while again rejecting Belak's ineffective-assistance claims. The Supreme Court of Pennsylvania granted both parties' petitions, dismissed Belak's ineffective-assistance claims without prejudice to collateral review, reversed the sentencing portion of the Superior Court's decision, and reinstated the judgment of sentence.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The court reversed the Superior Court's order vacating the judgment of sentence and reinstated Belak's judgment of sentence; it vacated the Superior Court's ruling on ineffective assistance and dismissed those claims without prejudice to pursuit in a PCRA petition.

CASES CITED

- *Commonwealth v. Butler*, 563 Pa. 324, 760 A.2d 384 (2000)
- *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002)
- *Commonwealth v. Bomar*, 826 A.2d 831 (Pa. 2003)
- *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435 (2000)
- *Commonwealth v. Fahy*, 558 Pa. 313, 737 A.2d 214 (1999)
- *Lewis v. United Hosps., Inc.*, 547 Pa. 626, 692 A.2d 1055 (1997)
- *Commonwealth v. Walker*, 468 Pa. 323, 362 A.2d 227 (1976)
- *Commonwealth v. Rizzuto*, 566 Pa. 40, 777 A.2d 1069 (2001)
- *State v. Burdick*, 782 A.2d 319 (Me. 2001)
- *Commonwealth v. Eddings*, 565 Pa. 256, 772 A.2d 956 (2001)

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