

SUPREME COURT OF NORTH CAROLINA

State v. Wagner, 356 N.C. 599

572 S.E.2d 777 (2002) · No. No. 108A02 · Decided December 20, 2002

SUMMARY

The Supreme Court of North Carolina held that an indictment charging felonious possession of drug paraphernalia was facially invalid because it was unsupported by the cited statute, depriving the trial court of jurisdiction. The court vacated that conviction and the corresponding Court of Appeals decision. It also held that resentencing the defendant for attempted possession of cocaine to a term more severe than his original sentence violated N.C.G.S. § 15A-1335, and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Per Curiam
JURISDICTION	North Carolina
DECIDED	December 20, 2002
DOCKET	No. 108A02
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Court of Appeals' decision upholding defendant's convictions and sentences after the trial court denied his motion to dismiss and sentenced him following a jury trial.
STANDARD OF REVIEW	The Supreme Court reviewed jurisdictional validity of the indictment and the legality of the sentence as questions of law.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of North Carolina.
PARTIES	Belvin E. Wagner v. State of North Carolina

TOPICS

- criminal procedure
- appellate jurisdiction
- sentencing
- post-conviction relief
- plea bargaining

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate jurisdiction
- sentencing
- post-conviction relief

QUESTIONS PRESENTED

1. Whether the indictment charging felonious possession of drug paraphernalia was facially invalid because the statute cited in the indictment did not support that offense, thereby depriving the trial court and Court of Appeals of jurisdiction.
2. Whether North Carolina General Statutes section 15A-1335 prohibited imposing a more severe sentence for attempted possession of cocaine after defendant's prior guilty plea and sentence for the same offense had been set aside on collateral review.
3. Whether the fact that the original conviction resulted from a negotiated guilty plea rather than a jury verdict affected application of section 15A-1335.

HOLDINGS

1. An indictment that facially fails to charge a cognizable criminal offense deprives the trial court of jurisdiction; the resulting conviction is void, and the appellate court lacks jurisdiction over the conviction as well.
2. North Carolina General Statutes section 15A-1335 prohibits imposing a more severe sentence for the same offense or conduct after the defendant's prior conviction or sentence has been set aside on direct review or collateral attack.

KEY QUOTATIONS

"For a court to have jurisdiction, 'a criminal offense [must] be charged in the warrant or indictment upon which the State brings the defendant to trial.'" (779)

"Pursuant to this statute a defendant whose sentence has been successfully challenged cannot receive a more severe sentence for the same offense or conduct on remand." (779)

"This Court has held that '[a] plea of guilty, accepted and entered by the trial court, is the equivalent of conviction.'" (779)

FACTUAL BACKGROUND

Defendant was arrested without a warrant during an undercover operation while attempting to purchase cocaine. He initially pleaded guilty to attempted possession of cocaine as an habitual felon and received 101 to 131 months' imprisonment. After the plea and judgment were vacated because the parties had incorrectly calculated his prior-record level, defendant was reindicted, convicted after a jury trial, and sentenced to substantially longer terms; the new indictment also charged felonious possession of drug paraphernalia based on an antenna found during the original arrest.

PROCEDURAL HISTORY

Defendant originally pleaded guilty to attempted possession of cocaine as an habitual felon and received a sentence of 101 to 131 months. After defendant successfully moved for appropriate relief based on an erroneous prior-record-level calculation, the trial court vacated the plea and judgment. Defendant was subsequently indicted for attempted possession of cocaine, felonious possession of drug paraphernalia, and habitual-felon

status, convicted by a jury, and sentenced to two consecutive terms of 135 to 171 months. The Court of Appeals upheld the convictions and sentences. The Supreme Court of North Carolina vacated the drug-paraphernalia conviction for lack of jurisdiction and reversed and remanded as to the attempted-possession sentence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals must further remand to the trial court for resentencing on the attempted-possession conviction in a manner consistent with the opinion and section 15A-1335. The drug-paraphernalia conviction and the Court of Appeals' decision concerning that conviction are vacated.

CASES CITED

- State v. Vestal, 281 N.C. 517, 520, 189 S.E.2d 152, 155 (1972)
- State v. Earley, 24 N.C. App. 387, 389, 210 S.E.2d 541, 543 (1975)
- State v. Morgan, 246 N.C. 596, 599, 99 S.E.2d 764, 766 (1957)
- State v. Brown, 320 N.C. 179, 210, 358 S.E.2d 1, 22, cert. denied, 484 U.S. 970 (1987)
- State v. Hemby, 333 N.C. 331, 336-37, 426 S.E.2d 77, 80 (1993)
- State v. Wall, 348 N.C. 671, 502 S.E.2d 585 (1998)