

SUPREME COURT OF WASHINGTON

State v. Gassman

175 Wash. 2d 208 (2012) · No. 85801-2 · Decided August 23, 2012

SUMMARY

The Washington Supreme Court considered whether a trial court properly imposed attorney-fee sanctions against the State under its inherent authority in a criminal prosecution. The court held that although bad faith may be inferred from the record without an express finding, the record here showed only careless conduct and did not support an inference of bad faith. The court reversed the sanctions order.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Chambers, J.; Madsen, C.J.; C. Johnson, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Stephens, J.; Wiggins, J.; González, J.
JURISDICTION	Washington
DECIDED	August 23, 2012
DOCKET	85801-2
DISPOSITION	reversed
PROCEDURAL POSTURE	The State appealed an order awarding attorney fees as sanctions against the State in a criminal prosecution. The Washington Court of Appeals affirmed, and the Washington Supreme Court granted review.
STANDARD OF REVIEW	Sanctions decisions are reviewed for abuse of discretion. A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	State of Washington v. David Partovi

TOPICS

- criminal procedure
- remedies
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- criminal procedure
- appellate procedure
- judicial sanctions
- remedies

QUESTIONS PRESENTED

1. Whether a trial court may impose attorney-fee sanctions under its inherent authority in a criminal case without making an express finding of bad faith.
2. Whether the record supported an inference of bad faith or conduct tantamount to bad faith sufficient to sustain the sanctions award.

HOLDINGS

1. An express finding of bad faith is not strictly required, but attorney-fee sanctions imposed under inherent authority must be supported by conduct that is bad faith or tantamount to bad faith, which may be inferred from the record.
2. The sanctions award could not be sustained because the trial court found only that the State's conduct was careless and not purposeful, and the record—including defense counsel's concessions—did not support an inference of bad faith or conduct tantamount to bad faith.

KEY QUOTATIONS

“While a finding of bad faith is the preferred basis for imposing sanctions in a criminal case, we will uphold sanctions if we can infer bad faith from the record before us.” (208)

“Given the trial court’s specific description of the State’s behavior as “careless,” RP at 42; CP at 25,118, and Partovi’s concessions in the record and during oral argument, we cannot infer any conduct tantamount to bad faith in the record before us to support the court’s sanction.” (213)

FACTUAL BACKGROUND

The State moved on the first day of trial to amend the information's alleged offense date from April 15 to April 17, 2008. Defense counsel objected because they had prepared alibi defenses for April 15, and the trial court granted the amendment and continued the trial. The court awarded \$2,000 in attorney fees to each defense counsel, finding the State's conduct careless but not purposeful. On review, defense counsel conceded that he had not filed an alibi notice, knew several days earlier of a possible date change, understood that the original "on or about" language was sufficient to include April 17, and did not request or need a continuance.

PROCEDURAL HISTORY

The Spokane County trial court permitted the State to amend the information on the first day of trial to change the alleged offense date from April 15 to April 17, 2008. The court continued the trial and awarded \$2,000 to each defense counsel for additional work related to the alibi issue, characterizing the State's conduct as careless but not purposeful. After denying reconsideration, the trial court's award was affirmed by the Court of Appeals; the Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993)
- In re Recall of Pearsall-Stipek, 136 Wn.2d 255, 266-67, 961 P.2d 343 (1998)
- Cowles Publ'g Co. v. Murphy, 96 Wn.2d 584, 588, 637 P.2d 966 (1981)
- Chambers v. NASCO, Inc., 501 U.S. 32, 45-47, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991)
- State v. S.H., 102 Wn. App. 468, 474-75, 8 P.3d 1058 (2000)
- Roadway Express, Inc. v. Piper, 447 U.S. 752, 767, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980)
- Wilson v. Henkle, 45 Wn. App. 162, 175, 724 P.2d 1069 (1986)
- State v. Gassman, 160 Wn. App. 12, 248 P.3d 91 (2011)

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