

SUPREME COURT OF INDIANA

J.S. v. State

928 N.E.2d 576 (Ind. 2010) · No. 79S02-1006-CR-296 · Decided June 9, 2010

SUMMARY

The Indiana Supreme Court held that LSI-R and similar evidence-based offender risk assessment scores may supplement a sentencing judge’s evaluation but do not themselves constitute aggravating or mitigating circumstances. The court found no error in the trial court’s decision to give no mitigating weight to the defendant’s LSI-R score and affirmed the judgment after granting transfer.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Dickson, Justice; Shepard, C.J.; Sullivan, Justice; Boehm, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	June 9, 2010
DOCKET	79S02-1006-CR-296
DISPOSITION	affirmed
PROCEDURAL POSTURE	J.S. appealed convictions and concurrent sentences for two counts of child molesting. The Indiana Supreme Court granted transfer from the Indiana Court of Appeals to address the sentencing court's treatment of the defendant's LSI-R score and summarily affirmed the Court of Appeals on the remaining issues.
STANDARD OF REVIEW	A sentencing court's reasons for imposing a particular sentence, and its omission of reasons arguably supported by the record, are reviewed for abuse of discretion; the relative weight assigned to sentencing reasons is not subject to appellate review.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	J.S. v. State of Indiana

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether an LSI-R offender recidivism-risk score may be considered in judicial sentencing proceedings.
2. Whether an LSI-R score may function as an aggravating or mitigating circumstance in determining the length of a sentence.
3. Whether the trial court abused its discretion by disregarding J.S.'s LSI-R score.
4. Whether the remaining appellate issues warranted relief after transfer.

HOLDINGS

1. An LSI-R score and similar evidence-based offender recidivism-risk assessments are appropriate supplemental considerations in judicial sentencing proceedings and may inform individualized sentencing decisions, including decisions concerning suspended sentences, probation, and alternative treatment.
2. An LSI-R score or similar offender-risk assessment does not itself constitute, and may not serve as, an aggravating or mitigating circumstance for purposes of determining the appropriate length of a sentence.
3. The trial court did not abuse its discretion by giving no mitigating weight to, or disregarding, J.S.'s LSI-R score.
4. The Court of Appeals' decision was summarily affirmed as to all other appellate issues raised by J.S.

KEY QUOTATIONS

“Disapproving of the resistance to LSI-R test results expressed by the Court of Appeals in Rhodes, we hold that the LSI-R score is an appropriate supplemental consideration in judicial sentencing proceedings.” (577)

“For these reasons, the offender risk assessment scores do not in themselves constitute, and cannot serve as, an aggravating or mitigating circumstance.” (578)

“We find no error in the trial court's decision to disregard the defendant's LSI-R score.” (579)

FACTUAL BACKGROUND

J.S. was convicted of two counts of child molesting, each a Class C felony. The trial court imposed concurrent executed sentences of eight years and four years, citing aggravating circumstances including J.S.'s lengthy criminal history, the victim's age, lack of remorse, abuse of a position of trust, and multiple offenses. J.S.'s LSI-R score was 13, placing him in the low-risk/needs category, but the trial court stated that it would discount the score and would not treat it as either an aggravating or mitigating factor.

PROCEDURAL HISTORY

Following a jury trial, J.S. was convicted of two Class C felony counts of child molesting and received concurrent executed sentences of eight years and four years. The Indiana Court of Appeals affirmed the

convictions and sentence but generally disapproved consideration of LSI-R results in sentencing. The Indiana Supreme Court granted transfer to resolve the LSI-R issue in conjunction with *Malenchik v. State* and summarily affirmed the Court of Appeals on all other issues.

DISPOSITION

affirmed

CASES CITED

- *Malenchik v. State*, 928 N.E.2d 564 (Ind. 2010)
- *Rhodes v. State*, 896 N.E.2d 1193, 1195 (Ind. Ct. App. 2008)
- *J.S. v. State*, No. 79A02-0805-CR-465, 2009 WL 1851035 (Ind. Ct. App. June 29, 2009)
- *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007)
- *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 248, 127 S. Ct. 1654, 1665, 167 L. Ed. 2d 585, 598 (2007)
- *Eddings v. Oklahoma*, 455 U.S. 104, 112, 102 S. Ct. 869, 875, 71 L. Ed. 2d 1, 9 (1982)

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