

SUPREME COURT OF THE STATE OF OREGON

State v. Lykins

357 Or. 145 (2015) · No. S061997 · Decided April 23, 2015

SUMMARY

The Oregon Supreme Court held that, for purposes of the sentencing departure rule in OAR 213-008-0002(1)(b)(B), the term "victim" has the same meaning as in the statute defining the offense for which the defendant is being sentenced. Because witness tampering under ORS 162.285 is an offense against the state and public justice, the witness who was tampered with was not a victim for purposes of the vulnerable-victim departure factor. The court reversed the Court of Appeals, vacated the sentence, and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of the State of Oregon
WRITING FOR THE COURT	Baldwin, J.
JURISDICTION	Oregon
DECIDED	April 23, 2015
DOCKET	S061997
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Oregon Supreme Court granted review of the Court of Appeals' decision affirming an upward departure sentence imposed after defendant's conviction for tampering with a witness.
STANDARD OF REVIEW	The court construed the administrative sentencing rule using the same methodology applied to statutes, examining text, context, and useful legislative history. It reviewed whether the departure sentence was legally authorized based on the undisputed facts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Michael Paul Lykins v. State of Oregon

TOPICS

- sentencing
- statutory interpretation
- legislative history
- criminal procedure
- administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the term "victim" in OAR 213-008-0002(1)(b)(B) means the victim of the offense for which the defendant is being sentenced or includes a person directly harmed by the defendant's criminal conduct.
2. Whether O'Connor was a vulnerable victim for purposes of the departure factor when defendant was sentenced for tampering with a witness under ORS 162.285.
3. Whether the trial court lawfully imposed an upward departure sentence based on O'Connor's vulnerability.

HOLDINGS

1. For purposes of OAR 213-008-0002(1)(b)(B), the term "victim" has the same meaning as it has in the statutory provision defining the offense for which the defendant is being sentenced.
2. A witness who is tampered with is not a victim of the crime of tampering with a witness under ORS 162.285 because harm to that witness is not an element of the offense.
3. The trial court erred by imposing an upward departure sentence on defendant's tampering-with-a-witness conviction based on O'Connor's vulnerability.

KEY QUOTATIONS

*"We therefore conclude that, for purposes of OAR 213-008-0002(1)(b)(B), which permits a trial court to enhance a defendant's sentence when the defendant "knew or had reason to know of the victim's particular vulnerability, * * * which increased the harm or threat of harm caused by the criminal conduct," the term "victim" has the same meaning as it has in the relevant statutory provision defining the offense for which the defendant is being sentenced." (162-63)*

"A witness tampered with may be affected by the defendant's criminal conduct, but, like the child witnesses in Glaspey, that witness does not suffer harm that is an element of the criminal offense." (153-54)

FACTUAL BACKGROUND

Defendant attempted to persuade his girlfriend, O'Connor, to provide false information to authorities and testify falsely in connection with charges arising from his entry into her apartment. He made three telephone calls to her from jail and attempted to exploit her psychological vulnerability and medication-related issues. He was convicted of tampering with a witness, and the trial court relied on O'Connor's vulnerability to impose an upward departure sentence.

PROCEDURAL HISTORY

A jury convicted defendant of two counts of tampering with a witness, which the circuit court merged into a single conviction, as well as unrelated offenses that were not at issue on review. The circuit court imposed a 48-month durational departure sentence based on the vulnerable-victim aggravating factor in OAR 213-008-0002(1)

(b)(B). The Court of Appeals affirmed, and the Oregon Supreme Court reversed, vacated the sentence, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals decision is reversed, the circuit court's sentence is vacated, and the case is remanded to the circuit court for resentencing.

CASES CITED

- State v. McClure, 355 Or. 704, 705, 335 P.3d 1260 (2014)
- State v. Lykins, 259 Or. App. 475, 479-81, 314 P.3d 704 (2013)
- State v. Teixeira, 259 Or. App. 184, 192, 199, 313 P.3d 351 (2013)
- State v. Bea, 318 Or. 220, 224, 864 P.2d 854 (1993)
- State v. Glaspey, 337 Or. 558, 563-65, 100 P.3d 730 (2004)
- State v. Speedis, 350 Or. 424, 426-27, 256 P.3d 1061 (2011)
- State v. Gaines, 346 Or. 160, 171-72, 206 P.3d 1042 (2009)
- Wetherell v. Douglas County, 342 Or. 666, 678, 160 P.3d 614 (2007)
- State v. Lopez-Minjarez, 350 Or. 576, 583, 260 P.3d 439 (2011)
- Force v. Department of Revenue, 350 Or. 179, 189, 252 P.3d 306 (2011)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 611, 859 P.2d 1143 (1993)
- Tharp v. PSRB, 338 Or. 413, 422, 110 P.3d 103 (2005)

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