

SUPREME COURT OF KANSAS

State v. Cook, 286 Kan. 766

187 P.3d 1283 (2008) · No. No. 98,671 · Decided July 25, 2008

SUMMARY

The Supreme Court of Kansas considered whether prosecuting Larhon Cook under amended offender-registration statutes violated the constitutional prohibition against ex post facto laws. The court held that Cook’s failure to register was a continuing violation and that each 30-day period after the amendments’ effective date constituted a new offense. It reversed the dismissal and remanded with directions to reinstate the charge.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Rosen, J.
JURISDICTION	Kansas
DECIDED	July 25, 2008
DOCKET	No. 98,671
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed from an order dismissing a charge of failure to register as a sex offender on ex post facto grounds. The appeal was transferred from the Kansas Court of Appeals to the Supreme Court of Kansas.
STANDARD OF REVIEW	Constitutional challenges to the application of a statute are reviewed de novo under an unlimited standard of review. Legislative enactments are presumed constitutional, and a statute will not be declared unconstitutional as applied unless its infringement of constitutional rights is clear beyond a reasonable doubt.
PRECEDENTIAL VALUE	published Kansas Supreme Court opinion
PARTIES	State of Kansas v. Larhon Cook

TOPICS

- constitutional law
- due process
- statutory interpretation
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal law

constitutional law

appellate law

QUESTIONS PRESENTED

1. Whether applying the 2006 amendments to the Kansas Offender Registration Act, including the increased penalty and separate-offense provision, to Cook's continuing failure to register violated the constitutional prohibition against ex post facto laws.
2. Whether the State could charge Cook after July 1, 2006 based on registration violations that continued or recurred after the amendments became effective.

HOLDINGS

1. Applying the amended registration statute to Cook did not violate the prohibition against ex post facto laws because his failure to register was continuing and, after July 1, 2006, each 30-day period constituted a new and separate offense subject to the amended penalty.

KEY QUOTATIONS

"We find no violation of ex post facto prohibitions. The order of the district court dismissing the charge is reversed. The case is remanded to the district court to reinstate the charge of failure to register as a sex offender pursuant to K.S.A.2006 Supp. 22-4903." (187 P.3d at 1290)

FACTUAL BACKGROUND

Cook was convicted of aggravated indecent solicitation of a child in 1999 and, upon release in September 2005, registered an address in Kansas City, Kansas. He did not file additional registration forms after the initial form, and a January 2006 verification letter was returned marked that he had moved and left no address. Effective July 1, 2006, Kansas increased the penalty for violating the registration statute and provided that a continuing violation lasting more than 30 days constituted a new and separate offense. After an October 2006 investigation found Cook at neither of the two known addresses, the State charged him in November 2006 with a severity-level 5 felony for failing to register his address change.

PROCEDURAL HISTORY

The Wyandotte County District Court determined that applying the 2006 amendments to the Kansas Offender Registration Act would violate the Ex Post Facto Clause. It ordered that Cook be tried for a severity-level 10 felony rather than a severity-level 5 felony, then dismissed the charge after denying the State's motion to reconsider. The State timely appealed, and the case was transferred to the Kansas Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to reinstate the charge of failure to register as a sex offender pursuant to K.S.A. 2006 Supp. 22-4903.

CASES CITED

- State v. Myers, 260 Kan. 669, 923 P.2d 1024 (1996), cert. denied, 521 U.S. 1118 (1997)
- State v. Wilkinson, 269 Kan. 603, 9 P.3d 1 (2000)
- State v. Hemby, 264 Kan. 542, 957 P.2d 428 (1998)
- State v. Scott, 265 Kan. 1, 961 P.2d 667 (1998)
- State v. Snelling, 266 Kan. 986, 975 P.2d 259 (1999)
- State v. Armbrust, 274 Kan. 1089, 59 P.3d 1000 (2002)
- United States v. Allen, 886 F.2d 143, 146 (8th Cir. 1989)
- Weaver v. Graham, 450 U.S. 24, 28-30 (1981)
- Calder v. Bull, 3 U.S. (3 Dall.) 386, 397 (1798)
- Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 138 (1810)
- United States v. Bailey, 444 U.S. 394, 413-14 (1980)
- United States v. Lennon, 372 F.3d 535, 541 (3d Cir. 2004)
- United States v. DiSantillo, 615 F.2d 128 (3d Cir. 1980)
- United States v. Erhart, 415 F.3d 965, 973 (8th Cir. 2004)
- United States v. Gray, 876 F.2d 1411, 1419 (9th Cir. 1989), cert. denied, 495 U.S. 930 (1990)
- United States v. Vaughn, 433 F.3d 917, 921-23 (7th Cir. 2006)
- United States v. Olis, 429 F.3d 540, 544-45 (5th Cir. 2005)
- United States v. Butler, 954 F.2d 114, 120-21 (2d Cir. 1992)
- United States v. Thomas, 895 F.2d 51, 57-58 (1st Cir. 1990)
- Cheek v. United States, 498 U.S. 192, 199 (1991)
- State ex rel. Murray v. Palmgren, 231 Kan. 524, 536, 646 P.2d 1091 (1982)
- State v. Young, 228 Kan. 355, 360, 614 P.2d 441 (1980)
- Rogers v. Tennessee, 532 U.S. 451, 457 (2001)
- State v. Myers, 260 Kan. 669, 676, 923 P.2d 1024 (1996)
- State v. Wilkinson, 269 Kan. 603, 606, 9 P.3d 1 (2000)