

DISTRICT OF COLUMBIA COURT OF APPEALS

Gilberto Lopez-Ramirez v. United States

171 A.3d 169 (D.C. 2017) · No. 16-CM-1319 · Decided October 12, 2017

SUMMARY

The District of Columbia Court of Appeals held that a Victims of Violent Crime Compensation Act assessment is not a "fine or penalty" for purposes of determining whether a defendant has a statutory right to a jury trial under D.C. Code § 16-705. The court affirmed the denial of Gilberto Lopez-Ramirez's jury demand and remanded solely to correct his sentence for attempted misdemeanor sexual abuse. Judge Beckwith dissented in part, concluding that the assessment should count as a fine or penalty.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Fisher; Beckwith; Nebeker
JURISDICTION	District of Columbia
DECIDED	October 12, 2017
DOCKET	16-CM-1319
DISPOSITION	remanded
PROCEDURAL POSTURE	After a bench trial in the Superior Court of the District of Columbia, appellant was convicted of attempted misdemeanor sexual abuse and acquitted of three contempt counts. The Superior Court denied his motion for a jury trial, and he appealed. The District of Columbia Court of Appeals affirmed the denial of a jury trial but remanded to correct the sentence.
STANDARD OF REVIEW	De novo review applies to questions of statutory interpretation.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the District of Columbia Court of Appeals.
PARTIES	Gilberto Lopez-Ramirez v. United States

TOPICS

- criminal procedure
- statutory interpretation
- jury selection
- sentencing
- appellate procedure

PRACTICE AREAS

criminal procedure

statutory interpretation

jury trial

sentencing

QUESTIONS PRESENTED

1. Whether a mandatory Victims of Violent Crime Compensation Act assessment counts as a fine or penalty under D.C. Code § 16-705(b)(1)(B) when determining whether a defendant is entitled to demand a jury trial.
2. Whether the Superior Court imposed an excessive sentence by sentencing appellant for attempted misdemeanor sexual abuse to the full 180-day maximum applicable to misdemeanor sexual abuse rather than the reduced maximum applicable to an attempt.

HOLDINGS

1. A Victims of Violent Crime Compensation Act assessment is not a fine or penalty for purposes of determining whether multiple misdemeanor charges are jury-demandable under D.C. Code § 16-705(b)(1)(B). Accordingly, the appellant was not entitled to a jury trial based on adding the assessments to the potential fines.
2. The sentence was unlawful because attempted misdemeanor sexual abuse carries half the penalty for completed misdemeanor sexual abuse. The case was remanded for the limited purpose of correcting the sentence.

KEY QUOTATIONS

“We affirm the decision of the Superior Court denying appellant’s request for a jury trial. We remand for the limited purpose of correcting appellant’s sentence.” (171)

“We remand with instructions to correct appellant’s sentence. In all other respects, the judgment of the Superior Court is hereby Affirmed.” (177)

FACTUAL BACKGROUND

Lopez-Ramirez was charged with attempted misdemeanor sexual abuse and three counts of contempt. The maximum fines and Victims of Violent Crime Compensation Act assessments, if all charges resulted in convictions, would have totaled \$4,500, exceeding the \$4,000 cumulative fine-or-penalty threshold in D.C. Code § 16-705(b)(1)(B). He was tried without a jury, convicted only of attempted misdemeanor sexual abuse, and sentenced to 180 days of incarceration, with all but thirty days suspended, two years of probation, and a \$50 assessment.

PROCEDURAL HISTORY

Lopez-Ramirez sought a jury trial on the ground that the aggregate maximum monetary exposure from fines and Victims of Violent Crime Compensation Act assessments exceeded the statutory \$4,000 threshold. Judge Laura Cordero denied the request, concluding that the assessments were not fines. After conviction, Judge Neal E. Kravitz imposed an unlawful 180-day sentence for attempted misdemeanor sexual abuse, and the appellate court remanded for correction of that sentence.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand solely to correct appellant's sentence for attempted misdemeanor sexual abuse. The judgment is affirmed in all other respects, including the denial of a jury trial.

CASES CITED

- Parrish v. District of Columbia, 718 A.2d 133, 133-34 (D.C. 1998)
- Gotay v. United States, 805 A.2d 944, 948 n.9 (D.C. 2002)
- Lewis v. United States, 518 U.S. 322, 323-24 (1996)
- United States v. Nachtigal, 507 U.S. 1, 4-6 (1993)
- Peterson v. United States, 997 A.2d 682, 683-84 (D.C. 2010)
- Tippet v. Daly, 10 A.3d 1123, 1127 (D.C. 2010) (en banc)
- Washington Gas Light Co. v. Public Service Commission, 982 A.2d 691, 716 (D.C. 2009)
- In re C.G.H., 75 A.3d 166, 171 (D.C. 2013)
- A.R. v. F.C., 33 A.3d 403, 405 (D.C. 2011)
- Grayson v. AT&T Corp., 15 A.3d 219, 237-38 (D.C. 2011) (en banc)
- Banks v. United States, 359 A.2d 8, 10 (D.C. 1976)
- O'Rourke v. District of Columbia Police & Firefighters' Retirement & Relief Board, 46 A.3d 378, 383, 386-87 (D.C. 2012)
- FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000)
- United States v. Donaldson, 797 F.2d 125 (3d Cir. 1986)
- United States v. Dobbins, 807 F.2d 130, 131 (8th Cir. 1986)
- Speyer v. Barry, 588 A.2d 1147, 1165 (D.C. 1991)
- United States v. Hansen, 772 F.2d 940, 944 (D.C. Cir. 1985)
- Kremer v. Chemical Construction Corp., 456 U.S. 461, 468 (1982)
- Dolan v. United States Postal Service, 546 U.S. 481, 486 (2006)
- Odeniran v. Hanley Wood, LLC, 985 A.2d 421, 426 (D.C. 2009)