

COURT OF APPEALS OF THE STATE OF NEW YORK

People v. Horne

97 N.Y.2d 404, 767 N.E.2d 132, 740 N.Y.S.2d 675 (2002) · Decided March 14, 2002

SUMMARY

The New York Court of Appeals affirmed Marva Horne's conviction and restitution sentence arising from false income information submitted on social services benefit recertification forms. The court held that restitution could be ordered for losses resulting from the convicted offenses despite acquittals on related theft charges, that the restitution amount was not barred by the statutory cap, and that Apprendi did not require jury findings concerning the restitution amount. The court also rejected a challenge based on Horne's absence during a proceeding addressing legal and procedural issues.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Graffeo, J.; Chief Judge Kaye; Judge Smith; Judge Levine; Judge Ciparick; Judge Wesley; Judge Rosenblatt
JURISDICTION	New York
DECIDED	March 14, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction and sentence following a jury trial. The Appellate Division affirmed the conviction but reduced the restitution amount, and the New York Court of Appeals granted leave to appeal.
STANDARD OF REVIEW	The legality of the sentence and restitution order was reviewed as a question of law. The court also applied preservation principles to the unchallenged restitution amount and reviewed the defendant-presence issue under established rules governing proceedings involving only questions of law or procedure.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	Marva Horne v. The People of the State of New York

TOPICS

- restitution criminal
- sentencing
- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

criminal law

criminal sentencing

restitution

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether restitution could lawfully be imposed for benefit overpayments when the defendant was convicted of offering false instruments for filing but acquitted of related theft offenses.
2. Whether the restitution amount exceeded the statutory cap applicable to felony convictions.
3. Whether factual findings underlying the restitution order violated *Apprendi v. New Jersey*.
4. Whether the defendant's absence when the court denied her postverdict motion and discharged the jury required reversal.

HOLDINGS

1. A sentencing court may order restitution for losses or fruits of the offense of which the defendant was convicted, even when the defendant was acquitted of other charges arising from the same conduct, so long as the record supports the causal connection between the convicted conduct and the victim's loss.
2. Restitution exceeding the ordinary \$15,000 felony limit is permissible when it represents the return of the victim's property, including money, or its equivalent value; the order here was within the statute because it reimbursed DSS for benefit overpayments.
3. *Apprendi* does not require restitution-related factual determinations to be submitted to a jury and proved beyond a reasonable doubt because restitution is not a sentencing enhancement that increases the statutory maximum; it is a sentence within the authorized statutory range.
4. A defendant's presence is not required when the proceeding involves only questions of law or procedure; therefore, Horne's absence when the court denied the motion to set aside the verdict and discharged the jury did not require reversal.

KEY QUOTATIONS

"Where restitution is requested, Penal Law § 60.27 now states that the sentencing court "shall" order restitution in addition to any other sentence imposed "unless the interests of justice dictate otherwise" (97 N.Y.2d at 412)

"An acquittal of criminal charges is not equivalent to a finding of innocence" (97 N.Y.2d at 413)

"Restitution falls within the range of sentences available for any offense in New York; it is not a post-conviction sentencing enhancement mechanism analogous to the New Jersey statute addressed in Apprendi." (97 N.Y.2d at 415)

FACTUAL BACKGROUND

Horne failed to report income from four employers on social-services benefit recertification forms submitted to the Monroe County Department of Social Services. The jury found her guilty of three counts of offering a false instrument for filing in the first degree and acquitted her of grand larceny, welfare fraud, and misuse of food

stamps. The sentencing court found that she received benefit overpayments as a result of the false documents and ordered restitution, which the Appellate Division reduced to \$16,942.25.

PROCEDURAL HISTORY

Horne was convicted of three counts of offering a false instrument for filing in the first degree and acquitted of grand larceny, welfare fraud, and misuse of food stamps. The sentencing court imposed probation and restitution of \$18,575.13, plus a surcharge. The Appellate Division affirmed the conviction and reduced restitution to \$16,942.25; the Court of Appeals affirmed the Appellate Division's order.

DISPOSITION

affirmed

CASES CITED

- People v. Parker, 57 N.Y.2d 136 (1982)
- People v. Hall-Wilson, 69 N.Y.2d 154 (1987)
- People v. Kim, 91 N.Y.2d 407 (1998)
- People v. Consalvo, 89 N.Y.2d 140, 145 (1996)
- Reed v. State of New York, 78 N.Y.2d 1, 7 (1991)
- People ex rel. Matthews v. New York State Div. of Parole, 58 N.Y.2d 196, 203 (1983)
- People v. Rayam, 94 N.Y.2d 557 (2000)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- United States v. Ross, 279 F.3d 600 (8th Cir. 2002)
- United States v. Syme, 276 F.3d 131 (3d Cir. 2002)
- United States v. Bearden, 274 F.3d 1031 (6th Cir. 2001)
- United States v. Behrman, 235 F.3d 1049, 1054 (7th Cir. 2000)
- People v. Rodriguez, 85 N.Y.2d 586, 591 (1995)
- People v. Callahan, 80 N.Y.2d 273, 281 (1992)