

SUPREME COURT OF FLORIDA

State v. Kelly

999 So. 2d 1029 (Fla. 2008) · No. SC07-95 · Decided December 30, 2008

SUMMARY

The Supreme Court of Florida considers whether prior uncounseled misdemeanor DUI convictions may be used to enhance a later DUI charge from a misdemeanor to a felony. The court reaffirms a modified version of its Hlad and Beach framework under the Florida Constitution, holding that Florida provides a broader misdemeanor right to counsel based on prospective imprisonment than the federal standard. It further holds that the defendant satisfied the initial Beach burden and that the State failed to prove either appointment of counsel or a valid waiver.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Lewis, J.; Quince, C.J.; Anstead, J.; Pariente, J.; Wells, J.; Canady, J.; Polston, J.
JURISDICTION	Florida
DECIDED	December 30, 2008
DOCKET	SC07-95
DISPOSITION	remanded
PROCEDURAL POSTURE	The State sought review of a Fourth District Court of Appeal decision affirming dismissal of a felony DUI information and certifying a question of great public importance concerning use of prior uncounseled misdemeanor convictions to enhance a later misdemeanor to a felony.
STANDARD OF REVIEW	De novo review of the legal questions concerning the scope of the constitutional right to counsel and the use of prior convictions as elements or enhancers of a subsequent offense; review of the certified question under article V, section 3(b)(4) of the Florida Constitution.
PRECEDENTIAL VALUE	precedential
PARTIES	State of Florida v. Glenn Kelly

TOPICS

right to counsel

criminal procedure

appellate procedure

constitutional law

standard of review

PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

DUI law

QUESTIONS PRESENTED

1. Whether Kelly satisfied the Beach burden of production by asserting under oath that the prior misdemeanors were punishable by imprisonment, that he was indigent, that counsel was not appointed, and that he did not waive counsel.
2. Whether a misleading plea form and a silent record concerning a plea colloquy can establish a knowing, intelligent, and voluntary waiver of the right to counsel.
3. Whether Florida should follow *Nichols v. United States* rather than *Hlad v. State* and *State v. Beach* when prior uncounseled misdemeanor convictions are used under a recidivism statute to enhance a later misdemeanor DUI to a felony.
4. Whether Florida's Constitution, rules, and statutes provide indigent defendants charged with misdemeanors punishable by imprisonment a broader right to appointed counsel than the federal actual-imprisonment standard.
5. Whether prior uncounseled misdemeanor DUI convictions may be used to obtain enhanced penalties and fines short of incarceration.

HOLDINGS

1. Under article I, sections 2 and 16 of the Florida Constitution, together with Florida's prospective-imprisonment scheme, an indigent defendant has an independent right to appointed counsel in a misdemeanor prosecution punishable by imprisonment unless the trial judge timely certifies in writing that the defendant will not be incarcerated.
2. A misleading plea form, combined with a record silent as to a constitutionally sufficient plea colloquy, cannot establish that an indigent defendant knowingly, intelligently, and voluntarily waived the right to counsel.
3. *Nichols v. United States* is not controlling or persuasive for interpreting article I, section 16 of the Florida Constitution in the context of a recidivism statute that makes prior misdemeanor DUI convictions elements of a later felony offense.
4. The defendant's initial burden under *Hlad* and *Beach* is satisfied by a sworn assertion that the prior offense was punishable by imprisonment, the defendant was indigent and entitled to appointed counsel, counsel was not appointed, and the right to counsel was not waived. The burden then shifts to the State to prove that counsel was provided or that the right was validly waived.
5. The State may use prior uncounseled misdemeanor DUI convictions to seek enhanced penalties and fines short of incarceration, but may not use them to increase the defendant's loss of liberty unless counsel was provided or validly waived.

KEY QUOTATIONS

“Article I, section 16 of the Florida Constitution, as influenced by Florida's prospective-imprisonment standard, prevents the State from using uncounseled misdemeanor convictions to increase or enhance a defendant's later misdemeanor to a felony, unless the defendant validly waived his or her right to counsel with regard to those prior convictions.” (1053-1054)

“If the defendant sets forth these facts under oath, then a burden of persuasion shifts to the State to show either that counsel was provided or that the right to counsel was validly waived.” (1054)

“Florida law may afford greater right-to-counsel protections than those afforded by the Sixth Amendment.” (1040)

“That is the crux of the problem, and that is why the State may not, consistent with our state Constitution, impose deprivation of liberty as a penalty upon a defendant based on prior misdemeanor convictions, unless the defendant was either provided with counsel or validly waived that right.” (1051-1052)

FACTUAL BACKGROUND

Kelly was arrested in January 2003 for a fourth DUI offense after breath tests showed alcohol levels of .092% and .090%. The State initially filed a misdemeanor DUI charge, later nolle prossed it, and then refiled the case in circuit court as felony DUI based on three prior misdemeanor DUI convictions. Two prior convictions resulted from uncounseled no-contest pleas and were punishable by more than six months' imprisonment; the plea forms inaccurately suggested that appointed counsel was required only if the judge was considering jail time. The records did not establish that the prior courts conducted constitutionally sufficient plea colloquies or that Kelly validly waived counsel.

PROCEDURAL HISTORY

Kelly was charged in circuit court with felony DUI based on three prior misdemeanor DUI convictions. The circuit court dismissed the information after finding that the State could not use Kelly's prior uncounseled misdemeanor convictions as felony enhancers under *Hlad and Beach*. The Fourth District affirmed and certified a question to the Supreme Court of Florida. The Supreme Court approved the Fourth District's decision, disapproved inconsistent reasoning, and remanded for further proceedings under a modified *Hlad/Beach* framework.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Supreme Court approved the Fourth District's decision, disapproved any inconsistent reasoning, and remanded to the Fourth District for further proceedings consistent with the modified *Hlad/Beach* framework. On remand, the State may not use Kelly's prior misdemeanor DUI convictions to enhance the current offense's incarceration unless it proves that Kelly was represented by counsel or validly waived counsel in those prior proceedings; the convictions may still support enhanced penalties and fines short of incarceration.

CASES CITED

- State v. Kelly, 946 So. 2d 1152 (Fla. 4th DCA 2006)
- State v. Hlad, 585 So. 2d 928 (Fla. 1991)
- State v. Beach, 592 So. 2d 237 (Fla. 1992)
- Nichols v. United States, 511 U.S. 738 (1994)
- Baldasar v. Illinois, 446 U.S. 222 (1980)
- Parke v. Raley, 506 U.S. 20 (1992)
- Boykin v. Alabama, 395 U.S. 238 (1969)
- Argersinger v. Hamlin, 407 U.S. 25 (1972)
- Scott v. Illinois, 440 U.S. 367 (1979)
- State v. Finelli, 780 So. 2d 31 (Fla. 2001)
- State v. Harbaugh, 754 So. 2d 691 (Fla. 2000)
- State v. Woodruff, 676 So. 2d 975 (Fla. 1996)
- In re Winship, 397 U.S. 358 (1970)
- Burgett v. Texas, 389 U.S. 109 (1967)
- Traylor v. State, 596 So. 2d 957 (Fla. 1992)
- State v. Douse, 448 So. 2d 1184 (Fla. 4th DCA 1984)
- In re T.W., 551 So. 2d 1186 (Fla. 1989)
- Busby v. State, 894 So. 2d 88 (Fla. 2004)
- Perry v. State, 900 So. 2d 755 (Fla. 4th DCA 2005)
- Perriello v. State, 684 So. 2d 258 (Fla. 4th DCA 1996)
- Durocher v. Singletary, 623 So. 2d 482 (Fla. 1993)
- Case v. State, 865 So. 2d 557 (Fla. 1st DCA 2003)
- Alabama v. Shelton, 535 U.S. 654 (2002)
- Gideon v. Wainwright, 372 U.S. 335 (1963)
- Duncan v. Louisiana, 391 U.S. 145 (1968)
- Marks v. United States, 430 U.S. 188 (1977)
- Powell v. Alabama, 287 U.S. 45 (1932)
- Johnson v. Zerbst, 304 U.S. 458 (1938)