

SUPREME COURT OF WASHINGTON

State v. Ramos

171 Wash. 2d 46 (2011) · Decided February 10, 2011

SUMMARY

The Washington Supreme Court held that a remand requiring the trial court to specify community placement conditions required the exercise of discretion rather than a purely ministerial correction. Accordingly, Ramos had a constitutional right to be present and heard at the resentencing hearing.

CASE DETAILS

COURT	Supreme Court of Washington
JURISDICTION	Washington
DECIDED	February 10, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ramos petitioned for review of a Court of Appeals remand order holding that resentencing was unnecessary and directing the trial court only to clarify or amend the judgment and sentence concerning community placement.
STANDARD OF REVIEW	De novo review of the legal effect of the Court of Appeals' remand order and whether the remand required an exercise of sentencing discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joel Ramos v. State of Washington

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals' remand to correct the community-placement provisions required the trial court to exercise sentencing discretion.

2. Whether Ramos had a constitutional right to be present and heard at the remand resentencing hearing.

HOLDINGS

1. The remand was not purely ministerial because the trial court was directed to specify special terms of community placement that could require the exercise of sentencing discretion.
2. Because the remand required the trial court to exercise sentencing discretion, Ramos had a constitutional right to be present and heard at resentencing.

KEY QUOTATIONS

“Since the trial court’s duty on remand is not merely ministerial, the trial court must exercise discretion. Ramos, therefore, has a right to be present and heard at resentencing.” (171 Wash. 2d at 49)

“The matter is remanded to the trial court to specify the community placement term and the conditions of community placement.” (171 Wash. 2d at 49)

FACTUAL BACKGROUND

In 1993, Joel Ramos and Miguel Gaitan, both fourteen years old, murdered four members of a family during a robbery. Ramos killed the family's six-year-old son and pleaded guilty in adult court to three counts of first degree felony murder and one count of first degree murder. His judgment and sentence did not specify the precise term or special conditions of community placement.

PROCEDURAL HISTORY

Ramos pleaded guilty in adult court to three counts of first degree felony murder and one count of first degree murder. After a series of appeals and remands concerning the juvenile declination order and the vagueness of his community-placement term, the Court of Appeals remanded for correction of the judgment and sentence but ruled that resentencing was not required. The Washington Supreme Court reversed to the extent the Court of Appeals denied resentencing and remanded for a hearing at which Ramos could be present and heard.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded to the trial court to specify the community-placement term and the conditions of community placement, with Ramos afforded the opportunity to be present and heard at resentencing.

CASES CITED

- State v. Ramos, No. 80365-0 (Wash. Mar. 7, 2008)
- State v. Broadaway, 133 Wn.2d 118, 135-36, 942 P.2d 363 (1997)
- State v. Ramos, 168 Wn.2d 1025 (2010)
- State v. Rupe, 108 Wn.2d 734, 743, 743 P.2d 210 (1987)

- State v. Davenport, 140 Wn. App. 925, 931-32, 167 P.3d 1221 (2007)
- State v. Ramos, noted at 156 Wn. App. 1041

OPINION

PER CURIAM.

Per Curiam ¶1 We consider whether the Court of Appeals' remand to the trial court to clarify the terms of community placement in this criminal case vested the trial court with discretion, triggering defendant Joel Ramos's constitutional right to be present at sentencing.

We grant Ramos's petition for review and hold that the remand order calls for the trial court to exercise discretion. Therefore, a sentencing hearing should be scheduled at which Ramos must be present. ¶2 In 1993, Ramos and Miguel Gaitan, both 14 years old, murdered a family of four in the family's home during a robbery. Gaitan killed a couple and their 12-year-old son, while Ramos killed the couple's 6-year-old son.

Ramos, through counsel, waived a declination hearing and pleaded guilty in adult court to three counts of first degree felony murder and one count of first degree murder. ¶3 In 2006, Ramos filed a notice of appeal challenging the juvenile court's declination order.

The Court of Appeals dismissed the appeal as untimely, but this court granted discretionary review and directed the Court of Appeals to reinstate Ramos's appeal. State v. Ramos, No. 80365-0 (Wash. Mar. 7, 2008). Through counsel, Ramos argued on appeal that the unit of prosecution for felony murder was *48each underlying felony rather than the number of persons killed.

He also urged that the relevant declination statute did not allow juveniles under 14 years old to waive a declination hearing. In a pro se statement of additional grounds for review, Ramos argued that his community placement term was too vague under State v. Broadaway, 133 Wn.2d 118, 135-36, 942 P.2d 363 (1997).

The Court of Appeals rejected these arguments and affirmed. ¶4 We again granted review and remanded the matter to the Court of Appeals for reconsideration in light of Broadaway. State v. Ramos, 168 Wn.2d 1025 (2010).

On remand the Court of Appeals held that the term of community placement was too vague, and it thus remanded to the trial court to correct the judgment and sentence to state the exact term of community placement and specify any special conditions of placement.

The Court of Appeals indicated in its opinion that resentencing was not required and that the trial court need only enter an order clarifying or amending the judgment and sentence. Ramos petitioned for this court's review. ¶5 A defendant has a constitutional right to be present at sentencing, including resentencing. State v. Rupe, 108 Wn.2d 734, 743, 743 P.2d 210 (1987).

However, when a hearing on remand involves only a ministerial correction and no exercise of discretion, the defendant has no constitutional right to be present. See *State v. Davenport*, 140 Wn. App. 925, 931-32, 167 P.3d 1221 (2007). When a sentence is insufficiently specific about the period of community placement, remand for the ministerial task of expressly stating the correct period of community placement is usually all that is required.

Broadaway, 133 Wn.2d at 136. But this court in *Broadaway* also noted that resentencing with discretion would be proper when, for instance, the trial court was originally mistaken about the period of community supervision, making it necessary to allow the court to exercise its discretion and reconsider the length of the prison sentence in light of the correct community supervision term.

Id. *49¶6 Here, the Court of Appeals, relying on *Broadaway*, remanded for correction of Ramos’s judgment and sentence to state the specific term of community placement, which was not so stated in the original judgment and sentence. If that is all the trial court will be required to do, the remand hearing would be purely ministerial, since the length of community placement is dictated by statute.

See former RCW 9.94A.120(8)(b) (1993). But the Court of Appeals went further, correctly directing the trial court to specify “the ‘special terms’ of the placement,” which it had not originally done. *State v. Ramos*, noted at 156 Wn. App. 1041, 2010 WL 2487831, at *2, 2010 Wash. App. LEXIS 1338, at *4.

Under former RCW 9.94A.120(8)(b) and (c) (1993), the trial court was required to impose certain conditions of placement unless it waived those conditions, and it had discretion to impose additional special terms, such as crime-related prohibitions.

In directing the trial court to specify any special terms, the Court of Appeals necessarily required the trial court to exercise discretion in amending the judgment and sentence. Since the trial court’s duty on remand is not merely ministerial, the trial court must exercise discretion. Ramos, therefore, has a right to be present and heard at resentencing. ¶7 The Court of Appeals is reversed to the extent it ruled that resentencing is not required.

The matter is remanded to the trial court to specify the community placement term and the conditions of community placement. Upon remand, Ramos shall be afforded the opportunity to be present and heard.