

SUPREME COURT OF OHIO

State v. Sawyer

124 Ohio St. 3d 547, 2010-Ohio-923 (Ohio 2010) · No. 2009-1332 · Decided March 16, 2010

SUMMARY

The Supreme Court of Ohio reversed in part the judgment of the Court of Appeals for Hamilton County and remanded the case under State v. Underwood. The decision concerned appellate review of a jointly recommended sentence and the application of Ohio's allied-offenses and sentencing-review statutes. A dissent argued that the jointly recommended sentence was not reviewable and that the plea agreement should be preserved.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Pfeifer, J.; O'Connor, J.; Lanzinger, J.; Lundberg Stratton, J.; O'Donnell, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	March 16, 2010
DOCKET	2009-1332
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed from the judgment of the Court of Appeals for Hamilton County, which affirmed Sawyer's convictions and sentence. The Supreme Court of Ohio reversed the appellate judgment in part and remanded for further proceedings.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion
PARTIES	Tiffany Sawyer v. The State of Ohio

TOPICS

- criminal procedure
- appellate procedure
- sentencing
- statutory interpretation
- remedies

PRACTICE AREAS

- criminal procedure
- appellate procedure
- sentencing
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the court of appeals had authority to review Sawyer's second and third assignments of error concerning the failure to merge the aggravated-assault convictions as allied offenses of similar import.
2. Whether *State v. Underwood* required reversal and remand despite the jointly recommended and imposed sentence.

HOLDINGS

1. The court of appeals had authority to review Sawyer's second and third assignments of error; its contrary conclusion was erroneous.
2. The court of appeals' judgment was reversed in part, and the cause was remanded for further proceedings consistent with *State v. Underwood*.

KEY QUOTATIONS

“The judgment of the court of appeals is reversed on the authority of State v. Underwood, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, as to the court of appeals’ holding that it was without authority to review appellant’s second and third assignments of error, and the cause is remanded to the court of appeals for further proceedings consistent with State v. Underwood.” (§ 1)

“A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” (§ 3)

FACTUAL BACKGROUND

Sawyer was originally indicted on two counts of felonious assault, each carrying a maximum prison term of eight years. The prosecution and defense negotiated a plea agreement under which Sawyer pleaded guilty to two aggravated-assault counts and the parties jointly recommended an aggregate three-year sentence. The trial court imposed two consecutive 18-month terms, and the court of appeals affirmed.

PROCEDURAL HISTORY

A Hamilton County grand jury indicted Sawyer on two counts of second-degree-felony felonious assault. Pursuant to a plea agreement, she pleaded guilty to two counts of fourth-degree-felony aggravated assault, and the trial court imposed two consecutive 18-month terms. The court of appeals affirmed, but the Supreme Court of Ohio reversed in part on the authority of *State v. Underwood* and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Court of Appeals for Hamilton County for further proceedings consistent with *State v. Underwood*, including consideration of Sawyer's second and third assignments of error.

CASES CITED

- State v. Underwood, 124 Ohio St. 3d 365, 2010-Ohio-1, 922 N.E.2d 923
- State v. Sawyer, 183 Ohio App. 3d 65, 2009-Ohio-3097, 915 N.E.2d 715, ¶ 70

OPINION

PER CURIAM.

[Cite as State v. Sawyer, 124 Ohio St.3d 547, 2010-Ohio-923.] THE STATE OF OHIO, APPELLEE, v. SAWYER, APPELLANT. [Cite as State v. Sawyer, 124 Ohio St.3d 547, 2010-Ohio-923.] Court of appeals’ judgment reversed in part on the authority of State v. Underwood, and cause remanded. (No. 2009-1332 — Submitted February 17, 2010 — Decided March 16, 2010.) APPEAL from the Court of Appeals for Hamilton County, No. C-080433, 183 Ohio App.3d 65, 2009-Ohio-3097. _____ {¶ 1} The judgment of the court of appeals is reversed on the authority of State v. Underwood, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, as to the court of appeals’ holding that it was without authority to review appellant’s second and third assignments of error, and the cause is remanded to the court of appeals for further proceedings consistent with State v. Underwood.

MOYER, C.J., and PFEIFER, O’CONNOR, and LANZINGER, JJ., concur. LUNDBERG STRATTON and O’DONNELL, JJ., dissent. CUPP, J., dissents for the reasons stated in his dissenting opinion in State v. Underwood. _____ O’DONNELL, J., dissenting. {¶ 2} Respectfully, I dissent. {¶ 3} I continue to adhere to the views expressed in my dissent in State v. Underwood, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, that a sentence in a criminal case is authorized by law if it is within the statutory range of penalties established by the General Assembly.

Id. at ¶ 55 (O’Donnell, J., dissenting). Further, a sentence that is authorized by law, jointly recommended by the parties, and imposed by the court is not subject to review even if it includes SUPREME COURT OF OHIO convictions for allied offenses of similar import. Id. at ¶ 64 (O’Donnell, J., dissenting). According to R.C. 2953.08(D)(1), “[a] sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” {¶ 4} In this case, the grand jury indicted Tiffany Sawyer on two counts of felonious assault, second-degree felonies, each of which carries a maximum term of eight years’ incarceration.

However, the prosecution and the defense reached an agreement: Sawyer agreed to plead guilty to two different counts of aggravated assault, fourth-degree felonies, and the parties agreed to jointly recommend an aggregate sentence of three years’ incarceration.

The trial court accepted the guilty pleas and imposed the jointly recommended sentence of two consecutive 18-month terms, and the court of appeals affirmed that judgment. *State v. Sawyer*, 183 Ohio App.3d 65, 2009-Ohio-3097, 915 N.E.2d 715, ¶ 70. {¶ 5} Notwithstanding Sawyer's agreement to a three-year sentence as punishment for her conduct, the majority relies on *Underwood* and reverses on the basis that the trial court's failure to merge the two counts of aggravated assault as allied offenses is subject to appellate review.

Thus, not only does Sawyer receive the benefit of the plea-bargained agreement by avoiding convictions for felonious assault as well as the potential maximum eight-year term of incarceration on each count, but also she receives a sentence of one-half the term she agreed to for her conduct. This result denies the state the benefit of its bargain and the opportunity to convict Sawyer of the felonious-assault charges. {¶ 6} The remedy fashioned by the majority in *Underwood* of merging the sentences for the allied offenses is patently unfair to the state because it fails to address the plea bargain and deals only with the sentence recommended by the parties and imposed by the court.

Because the state is deprived of the sentence to which it agreed, equity would suggest that it have the opportunity to renegotiate 2 January Term, 2010 the plea agreement with the defendant. Both the plea and the sentence therefore ought to be vacated in fairness to both parties. {¶ 7} The legislature never intended the allied-offenses statute, R.C. 2941.25(A), to apply as an exception to R.C.

2953.08(D)(1), which bars the appeal of a sentence that is authorized by law, jointly recommended by the parties, and imposed by the trial court. Nor did it intend a criminal defendant to gain the benefit of a plea-bargained reduction in charges and at the same time avoid the agreed-upon penalty. {¶ 8} Because the majority has misinterpreted the manifest purpose of the legislature in enacting R.C.

2953.08(D)(1), I urge the General Assembly to clarify its intent, to avoid the forthcoming appeals that will inevitably be generated by the court's decisions in this case and in *Underwood*.
LUNDBERG STRATTON, J., concurs in the foregoing opinion. _____ Joseph T. Deters, Hamilton County Prosecuting Attorney, and Rachel Lipman Curran, Assistant Prosecuting Attorney, for appellee.

Timothy Young, Ohio Public Defender, and Claire R. Cahoon, Assistant Public Defender, for appellant. _____ 3