

SUPREME COURT OF MINNESOTA

State of Minnesota v. Anthony Osborne, Sr.

715 N.W.2d 436 (Minn. 2006) · No. C1-03-253 · Decided June 8, 2006

SUMMARY

The Supreme Court of Minnesota held that Anthony Osborne did not forfeit his *Blakely v. Washington* claim by failing to raise it at sentencing because *Blakely* had not yet been decided and existing Minnesota precedent rejected comparable claims. The court concluded that the jury verdicts on other offenses and lesser-included offenses did not establish the aggravating facts supporting the upward sentencing departures. The court affirmed review of the alleged *Blakely* errors under a harmless-error standard.

CASE DETAILS

COURT	Supreme Court of Minnesota
WRITING FOR THE COURT	Hanson, Justice; Anderson, Justice; Paul H. Anderson, Justice; G. Barry Anderson, Justice
JURISDICTION	Minnesota
DECIDED	June 8, 2006
DOCKET	C1-03-253
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the Minnesota Court of Appeals' reversal of Osborne's upward-departure sentences on the ground that the sentences violated <i>Blakely v. Washington</i> . The State argued that Osborne forfeited his <i>Blakely</i> claim by failing to object at sentencing and that the jury's verdicts nevertheless supplied the necessary facts.
STANDARD OF REVIEW	The court reviewed the forfeiture issue and the alleged <i>Blakely</i> violation de novo, and reviewed the sentencing error for harmless error.
PRECEDENTIAL VALUE	Published Minnesota Supreme Court opinion; precedential.
PARTIES	State of Minnesota v. Anthony Osborne, Sr.

TOPICS

- sentencing
- sentencing guidelines
- sixth amendment
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

sentencing

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether *Blakely v. Washington* applied retroactively to Osborne's case, which remained pending on direct review when *Blakely* was decided.
2. Whether Osborne forfeited appellate review of his *Blakely* claim by failing to object at sentencing.
3. Whether jury verdicts on other counts, including lesser-included offenses, supplied the facts necessary to support the upward sentencing departures.
4. Whether the district court's reliance on aggravating factors neither found by the jury nor admitted by Osborne constituted harmless error.

HOLDINGS

1. *Blakely* applies retroactively to cases pending on direct review when *Blakely* was announced. Osborne's case remained pending because the 90-day period for seeking United States Supreme Court review had not expired when *Blakely* was decided.
2. A defendant does not forfeit appellate consideration of a *Blakely* sentencing claim by failing to object at sentencing when *Blakely* had not yet been decided and controlling Minnesota precedent had rejected the relevant constitutional theory.
3. The jury verdicts on the offenses for which Osborne was convicted and sentenced could not be used to support the upward sentencing departures on counts 2, 3, and 27.
4. The elements of a lesser-included offense under Minnesota Statutes section 609.04, subdivision 1(4), cannot support an upward sentencing departure.
5. The upward sentencing departures violated *Blakely* because the aggravating factors were neither found by the jury nor admitted by Osborne, and the error was prejudicial rather than harmless because it increased the governing sentence by 67 months.

KEY QUOTATIONS

"We cannot expect a defendant to foresee a new rule of law when we have consistently rejected that rule." (442)

"This is so because, by definition, forfeiture and the requirement of an affirmative waiver cannot coexist. They are antithetical." (443)

*"Because the upward departures increased the length of Osborne's governing sentence by 67 months, the *Blakely* error was necessarily prejudicial, not harmless."* (448)

FACTUAL BACKGROUND

Osborne was convicted following a three-year investigation involving controlled drug buys and a drug-trafficking organization that imported drugs from Chicago for distribution in Rochester. The district court

imposed a 225-month sentence on the principal count, an upward departure of 67 months from the presumptive sentence, based on aggravating factors such as group participation, major drug trafficking, sophistication, duration, and Osborne's position in the distribution hierarchy. Additional upward departures were imposed on two other counts, although those departures ran concurrently with the principal sentence.

PROCEDURAL HISTORY

An Olmsted County jury convicted Osborne of 28 drug-related offenses. The district court entered judgment on 23 counts, sentenced him on 21 counts, and imposed an aggregate 268-month sentence including upward durational departures. The court of appeals affirmed, and the Minnesota Supreme Court initially denied review. After *Blakely* was decided, the Supreme Court reopened the direct appeal and remanded for reconsideration; the court of appeals reversed the sentence and remanded for resentencing. The Minnesota Supreme Court affirmed that decision.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Resentence Osborne consistently with *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005).

CASES CITED

- *Blakely v. Washington*, 542 U.S. 296 (2004)
- *United States v. Booker*, 543 U.S. 220 (2005)
- *State v. Houston*, 702 N.W.2d 268 (Minn. 2005)
- *O'Meara v. State*, 679 N.W.2d 334 (Minn. 2004)
- *State v. Henderson*, 706 N.W.2d 758 (Minn. 2005)
- *State v. Allen*, 706 N.W.2d 40 (Minn. 2005)
- *State v. Jones*, 678 N.W.2d 1 (Minn. 2004)
- *State v. Baird*, 654 N.W.2d 105 (Minn. 2002)
- *State v. Vick*, 632 N.W.2d 676 (Minn. 2001)
- *State v. Smith*, 582 N.W.2d 894 (Minn. 1998)
- *State v. Lopez-Solis*, 589 N.W.2d 290 (Minn. 1999)
- *Blondheim v. State*, 573 N.W.2d 368 (Minn. 1998)
- *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
- *State v. Peterson*, 329 N.W.2d 58 (Minn. 1983)
- *State v. McIntosh*, 641 N.W.2d 3 (Minn. 2002)
- *State v. Spaeth*, 552 N.W.2d 187 (Minn. 1996)
- *State v. Koonsman*, 281 N.W.2d 487 (Minn. 1979)
- *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005)

- State v. Ross, 472 N.W.2d 651 (Minn. 1991)
- State v. Foster, 109 Ohio St. 3d 1, 845 N.E.2d 470 (2006)
- United States v. Duncan, 400 F.3d 1297 (11th Cir. 2005)
- Johnson v. United States, 520 U.S. 461 (1997)
- United States v. Cotton, 535 U.S. 625 (2002)
- Martinez v. Court of Appeal of California, 528 U.S. 152 (2000)

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