

SUPREME COURT OF INDIANA

McElroy v. State

865 N.E.2d 584 (Ind. 2007) · No. 49S02-0605-CR-174 · Decided May 2, 2007

SUMMARY

The Supreme Court of Indiana reviewed Tommy McElroy's enhanced concurrent sentences for two counts of reckless homicide and one count of criminal recklessness. The court held that the nature and circumstances of the offense was a valid aggravating factor, while the unsupported findings regarding criminal history and risk of reoffending were invalid. It affirmed the eight-year sentence, concluding that the sentencing error was harmless and that the sentence was not inappropriate under Indiana Appellate Rule 7(B).

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Rucker, Justice; Shepard, Chief Justice; Dickson, Justice; Sullivan, Justice; Boehm, Justice
JURISDICTION	Indiana
DECIDED	May 2, 2007
DOCKET	49S02-0605-CR-174
DISPOSITION	affirmed
PROCEDURAL POSTURE	McElroy pleaded guilty to two counts of reckless homicide and one count of criminal recklessness and received concurrent enhanced sentences totaling eight years. The Indiana Court of Appeals reversed and remanded for resentencing. The Indiana Supreme Court granted transfer and reviewed the sentencing issues.
STANDARD OF REVIEW	Sentencing decisions are reviewed for abuse of discretion. Under Indiana Appellate Rule 7(B), the appellate court independently reviews whether a sentence is inappropriate in light of the nature of the offense and the character of the offender.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tommy McElroy v. State of Indiana

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by relying on improper aggravating circumstances to impose enhanced concurrent sentences.
2. How an appellate court should reconcile conflicting oral and written sentencing statements.
3. Whether the eight-year sentence was inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender.

HOLDINGS

1. When oral and written sentencing statements conflict, the reviewing court should examine both statements to discern the trial court's findings rather than apply a categorical rule that the oral statement always controls.
2. A trial court may consider particularized circumstances surrounding the factual elements of an offense as an aggravating factor, provided it explains why those circumstances warrant an enhanced sentence.
3. The trial court did not abuse its discretion by considering the effects on the victims and their families as part of the weight assigned to the nature and circumstances of the offense rather than as a separate aggravating factor.
4. An aggravating circumstance cannot support an enhanced sentence when the sentencing court fails to state the facts and reasons supporting its existence.
5. A bare record of arrests or charges that did not result in convictions is not, without more, a valid aggravating circumstance supporting an enhanced sentence.
6. The sentence may be affirmed when invalid aggravating factors are harmless and the remaining valid aggravator adequately supports the sentence after balancing the mitigating circumstances.
7. The eight-year concurrent sentence for two counts of reckless homicide and one count of criminal recklessness was not inappropriate in light of the nature of the offense and the character of the offender.

KEY QUOTATIONS

“Rather than presuming the superior accuracy of the oral statement, we examine it alongside the written sentencing statement to assess the conclusions of the trial court.” (589)

“A bare record of arrest will not suffice to meet this standard.” (591)

“The sentence imposed by the trial court is supported by the sentencing orders, and the defendant's eight-year sentence is not inappropriate under Indiana Appellate Rule 7(B).” (592)

FACTUAL BACKGROUND

After a paint truck broke down, thirteen workers rode in the enclosed cargo area of another paint truck containing highly flammable paints, lacquers, and thinners. McElroy repeatedly used a lighter near a coworker who had poured lacquer thinner onto the truck floor, causing the fumes to ignite and engulf the cargo area. Two coworkers died and numerous others, including McElroy, suffered serious injuries.

PROCEDURAL HISTORY

The trial court imposed concurrent eight-year sentences after finding the nature and circumstances of the offense aggravating and several mitigating factors. The written abstract of judgment differed from the oral sentencing statement by listing prior criminal history and risk of committing another crime as aggravators and omitting lack of criminal history as a mitigator. The Court of Appeals reversed because it could not confidently affirm the enhanced sentence. The Indiana Supreme Court affirmed the trial court's sentence.

DISPOSITION

affirmed

CASES CITED

- Cotto v. State, 829 N.E.2d 520, 523, 525 (Ind. 2005)
- Powell v. State, 769 N.E.2d 1128, 1134-1136 & n.7 (Ind. 2002)
- K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)
- Bacher v. State, 722 N.E.2d 799, 801 (Ind. 2000)
- Morgan v. State, 675 N.E.2d 1067, 1074 (Ind. 1996)
- Robinson v. State, 805 N.E.2d 783, 792, 794 (Ind. 2004)
- Corbett v. State, 764 N.E.2d 622, 631 (Ind. 2002)
- Walter v. State, 727 N.E.2d 443, 449 (Ind. 2000)
- Strong v. State, 538 N.E.2d 924, 929 (Ind. 1989)
- Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006)
- Powell v. State, 751 N.E.2d 311, 315 (Ind. Ct. App. 2001)
- Newman v. State, 719 N.E.2d 832, 839 (Ind. Ct. App. 1999)
- Willey v. State, 712 N.E.2d 434, 446 n.8 (Ind. 1999)
- Ellis v. State, 707 N.E.2d 797, 804 (Ind. 1999)
- McCarthy v. State, 749 N.E.2d 528, 539 (Ind. 2001)
- Vasquez v. State, 762 N.E.2d 92, 97-98 (Ind. 2001)
- Smith v. State, 675 N.E.2d 693, 698 (Ind. 1996)
- Mitchem v. State, 685 N.E.2d 671, 680 (Ind. 1997)
- Tunstill v. State, 568 N.E.2d 539, 544 (Ind. 1991)
- Whatley v. State, 685 N.E.2d 48, 50 (Ind. 1997)
- Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999)
- Francis v. State, 817 N.E.2d 235, 238 n.3 (Ind. 2004)

- Kingery v. State, 659 N.E.2d 490, 498 (Ind. 1995)
- Thacker v. State, 709 N.E.2d 3, 9-10 (Ind. 1999)
- Bunch v. State, 697 N.E.2d 1255, 1258 (Ind. 1998)
- Bonds v. State, 721 N.E.2d 1238, 1243 (Ind. 1999)
- McElroy v. State, No. 49A02-0505-CR-381, slip op. at 12, 839 N.E.2d 818 (Ind. Ct. App. Dec. 8, 2005)

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