

SUPREME COURT OF KANSAS

State v. Smith

303 Kan. 673 (2016) · No. No. 112,250 · Decided January 29, 2016

SUMMARY

The Kansas Supreme Court affirmed the dismissal of Zachary C. Smith's untimely direct appeal and his untimely motion to withdraw his guilty pleas. The court held that although Smith was not properly informed at sentencing of all required appeal-right information under the State v. Ortiz framework, he failed to prove that he would have timely appealed if properly advised. The court also held that Smith waived any challenge to the finding that his motion to withdraw pleas was barred by the statutory time limit and lacked a showing of excusable neglect.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Biles, J.
JURISDICTION	Kansas
DECIDED	January 29, 2016
DOCKET	No. 112,250
DISPOSITION	affirmed
PROCEDURAL POSTURE	Smith directly appealed the district court's denial of his motion to withdraw his guilty pleas and dismissal of his untimely notice of appeal.
STANDARD OF REVIEW	The factual findings underlying whether an Ortiz exception applies are reviewed for substantial competent evidence, while the legal conclusion is reviewed de novo. A negative finding that a party failed to sustain its burden of proof will not be rejected absent arbitrary disregard of undisputed evidence or an extrinsic consideration such as bias, passion, or prejudice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Zachary C. Smith v. State of Kansas

TOPICS

- appellate procedure
- criminal procedure
- post-conviction relief
- plea bargaining
- due process

PRACTICE AREAS

criminal procedure

appellate procedure

post-conviction relief

constitutional law

QUESTIONS PRESENTED

1. Whether Smith qualified for an out-of-time appeal under the first State v. Ortiz exception because he was not properly informed of his appellate rights.
2. Whether Smith established that he would have timely appealed if he had been properly informed of his appellate rights.
3. Whether Smith's motion to withdraw his guilty pleas was timely or could be extended based on excusable neglect under K.S.A. 2014 Supp. 22-3210(e).

HOLDINGS

1. A sentencing court must inform a criminal defendant that a right to appeal the severity level of the sentence exists, the statutory time limit for taking the appeal, and that appointed counsel will be provided for an indigent defendant who wishes to appeal. Smith established that the sentencing court failed to provide all three required pieces of information, and the State failed to prove that he had actual knowledge of the right to appointed appellate counsel.
2. Smith was not entitled to an out-of-time appeal because he failed to carry his evidentiary burden of proving that he would have pursued a timely appeal if properly advised of his appellate rights.
3. Smith's motion to withdraw his pleas was untimely and procedurally barred because he failed to make the required affirmative showing of excusable neglect.

KEY QUOTATIONS

“To provide due process in this context, a district court must inform a criminal defendant at sentencing that (a) a right to appeal the severity level of the sentence exists; (b) the statutory time within which such appeal must be taken; and (c) if the defendant is indigent, an attorney will be appointed for the purpose of taking any desired appeal.” (syllabus ¶ 2)

“Claims under the first Ortiz exception are analyzed using a three-part burden shifting framework.” (syllabus ¶ 3)

FACTUAL BACKGROUND

In 2006, Smith pleaded guilty to felony murder and aggravated robbery in exchange for dismissal of an alternative first-degree premeditated murder count and agreed sentencing recommendations. The district court imposed sentences consistent with the plea agreement. At sentencing, the court told Smith only that he might have a right to appeal and should discuss it with counsel. In 2014, Smith moved to withdraw his pleas and filed an untimely notice of direct appeal, claiming he had not understood the plea consequences or his appellate rights.

PROCEDURAL HISTORY

Smith pleaded guilty in 2006 to felony murder and aggravated robbery pursuant to a plea agreement. More than seven years later, he moved to withdraw his pleas and filed an untimely direct appeal. The Sumner District Court denied the plea-withdrawal motion as untimely and unsupported by excusable neglect and dismissed the notice of appeal as untimely. Smith timely appealed those rulings to the Kansas Supreme Court.

DISPOSITION

affirmed

CASES CITED

- State v. Ortiz, 230 Kan. 733, 640 P.2d 1255 (1982)
- State v. Patton, 287 Kan. 200, 195 P.3d 753 (2008)
- State v. Phinney, 280 Kan. 394, 404, 122 P.3d 356 (2005)
- State v. Gill, 287 Kan. 289, 295, 196 P.3d 369 (2008)
- In re Marriage of Kuzanek, 279 Kan. 156, 159-60, 105 P.3d 1253 (2005)
- State v. Murray, 302 Kan. 478, 482, 353 P.3d 1158 (2015)
- State v. Moses, 296 Kan. 1126, 1128, 297 P.3d 1174 (2013)