

SUPREME COURT OF GEORGIA

Hall v. Vargas, 278 Ga. 868

608 S.E.2d 200 (2005) · No. No. S04A1910 · Decided January 18, 2005

SUMMARY

The Supreme Court of Georgia held that retroactive application of OCGA § 24-3-16, permitting certain out-of-court statements by child victims of abuse, did not violate the federal Ex Post Facto Clause because the statute changed admissibility of evidence without reducing the prosecution’s burden of proof. The court also held that Cuzzort v. State independently supported admission of the victim’s prior consistent statements and that the issue had already been resolved on direct appeal. The habeas court’s order granting relief was reversed.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice
JURISDICTION	Georgia
DECIDED	January 18, 2005
DOCKET	No. S04A1910
DISPOSITION	reversed
PROCEDURAL POSTURE	The Warden appealed from the habeas court's order granting Vargas's petition for a writ of habeas corpus and overturning his aggravated-child-molestation convictions based on the retroactive application of OCGA § 24-3-16.
STANDARD OF REVIEW	The court reviewed the habeas court's legal conclusion concerning the retroactive application of an evidentiary statute and its effect under the Ex Post Facto Clause.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Warden v. David Vargas

TOPICS

- ex post facto
- hearsay
- evidence
- habeas corpus
- state post-conviction relief

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the retroactive application of OCGA § 24-3-16, which permits certain child-abuse statements to be admitted when reliability and availability requirements are met, violated the Federal Constitution's Ex Post Facto Clause.
2. Whether *Cuzzort v. State* provided an independent basis for admitting the victim's prior consistent outcry statements and whether that evidentiary rule could be challenged in habeas proceedings as an ex post facto violation.

HOLDINGS

1. Retroactive application of OCGA § 24-3-16 did not violate the Ex Post Facto Clause because the statute changed the evidence admissible at trial without reducing the amount or degree of proof required to establish the elements of the offense or otherwise lessening the prosecution's evidentiary burden.
2. *Cuzzort* supplied an independent basis for admitting the victim's prior consistent outcry statements, and Vargas could not obtain habeas review of that issue because the Court of Appeals had already decided it on direct appeal and no change in facts or law undermined that determination.

KEY QUOTATIONS

“The issue of the admissibility of evidence is simply different from the question whether the properly admitted evidence is sufficient to convict the defendant.” (608 S.E.2d at 201)

“Without a change in the facts or the law, a habeas court will not review an issue decided on direct appeal.” (608 S.E.2d at 202)

FACTUAL BACKGROUND

In 1986, David Vargas was convicted of three counts of aggravated child molestation. At trial, two witnesses testified about an outcry made by the child victim approximately four months after the last alleged molestation. The alleged offenses occurred before OCGA § 24-3-16 became effective, but the statute was in effect when Vargas was tried.

PROCEDURAL HISTORY

Vargas was convicted in 1986 of three counts of aggravated child molestation, and the Court of Appeals affirmed. The Court of Appeals held that testimony concerning the victim's outcry was admissible under *Cuzzort v. State* and OCGA § 24-3-16. After the United States Supreme Court decided *Carmell v. Texas*, Vargas sought habeas relief based on the Ex Post Facto Clause. The Georgia Supreme Court granted a certificate of probable cause and remanded for consideration of that claim; the habeas court then granted relief, leading to this appeal.

DISPOSITION

reversed

CASES CITED

- Vargas v. State, 184 Ga. App. 650, 362 S.E.2d 461 (1987)
- Cuzzort v. State, 254 Ga. 745, 334 S.E.2d 661 (1985)
- Carmell v. Texas, 529 U.S. 513, 120 S. Ct. 1620, 146 L. Ed. 2d 577 (2000)
- Thompson v. Missouri, 171 U.S. 380, 18 S. Ct. 922, 43 L. Ed. 204 (1898)
- Luke v. Battle, 275 Ga. 370, 565 S.E.2d 816 (2002)
- Scott v. Hernandez-Cuevas, 260 Ga. 466, 396 S.E.2d 900 (1990)
- Bruce v. Smith, 274 Ga. 432, 434(2), 553 S.E.2d 808 (2001)

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