

SUPREME COURT OF OHIO

State v. Hunter

123 Ohio St. 3d 164, 2009-Ohio-4147 (Ohio 2009) · No. 2008-0661 · Decided August 25, 2009

SUMMARY

The Supreme Court of Ohio held that State v. Foster excised judicial fact-finding requirements from former R.C. 2929.14(D)(2) but did not eliminate the repeat violent offender specification. The court further held that designating an offender as a repeat violent offender under former R.C. 2929.01(DD) did not violate the Sixth Amendment, particularly where the defendant waived a jury determination, stipulated to the relevant facts, and the court considered information from the prior conviction’s judicial record. The court affirmed the judgment imposing the repeat violent offender enhancement.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Donnell, J.; Moyer, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	August 25, 2009
DOCKET	2008-0661
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hunter appealed his enhanced sentence for a repeat violent offender specification to the Supreme Court of Ohio after the Eighth District Court of Appeals affirmed the trial court's judgment.
STANDARD OF REVIEW	The court reviewed the legal questions concerning the effect of State v. Foster and the constitutionality of judicial fact-finding in designating a repeat violent offender de novo.
PRECEDENTIAL VALUE	published and binding precedent
PARTIES	Hugh Hunter v. The State of Ohio

TOPICS

- sentencing
- criminal procedure
- sixth amendment
- sentencing guidelines
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether *State v. Foster* eliminated the repeat violent offender specification from Ohio law.
2. Whether designating Hunter as a repeat violent offender under former R.C. 2929.01(DD), based on facts concerning a prior conviction, violated the Sixth Amendment right to a jury trial.
3. Whether the trial court could consider relevant information about the prior conviction contained in the judicial record when making the repeat violent offender designation.

HOLDINGS

1. *State v. Foster* excised judicial fact-finding from former R.C. 2929.14(D)(2) but did not eliminate the repeat violent offender specification defined in former R.C. 2929.01(DD).
2. The trial court did not violate Hunter's Sixth Amendment right to a jury trial by designating him a repeat violent offender under former R.C. 2929.01(DD).
3. When designating an offender as a repeat violent offender under former R.C. 2929.01(DD), a trial court does not violate the Sixth Amendment by considering relevant information about the offender's prior conviction that is part of the judicial record.

KEY QUOTATIONS

“Thus, Foster excised judicial fact-finding from former R.C. 2929.14(D)(2) but did not eliminate the repeat violent offender specification, as defined in former R.C. 2929.01(DD).” (§ 27)

“Thus, pursuant to Shepard, 544 U.S. 13, 125 S. Ct. 1254, 161 L. Ed. 2d 205, we hold that when designating an offender as a repeat violent offender pursuant to former R.C. 2929.01(DD), a trial court does not violate the Sixth Amendment by considering relevant information about the offender's prior conviction that is part of the judicial record.” (§ 38)

FACTUAL BACKGROUND

Hunter attacked Andrew McAuliffe at St. Malachi Church in Cleveland, causing multiple fractures and lacerations. He was indicted for felonious assault with a repeat violent offender specification and notice of a prior 1990 felonious-assault conviction. Hunter stipulated to the prior conviction and related facts, waived a jury trial on the specification, and the trial court found that he had caused physical harm in the prior offense and had served a prison term.

PROCEDURAL HISTORY

Hunter was convicted by a jury of felonious assault. After Hunter waived a jury trial on the repeat violent offender specification and stipulated to facts concerning his prior conviction, the trial court imposed a two-year repeat-violent-offender enhancement consecutive to an eight-year sentence. The Eighth District affirmed, and the Supreme Court of Ohio affirmed the appellate judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Foster, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470
- Shepard v. United States, 544 U.S. 13, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005)
- State v. Mathis, 109 Ohio St. 3d 54, 2006-Ohio-855, 846 N.E.2d 1
- State v. Payne, Lake App. No. 2004-L-118, 2005-Ohio-7043
- State v. Payne, 114 Ohio St. 3d 502, 2007-Ohio-4642, 873 N.E.2d 306
- Smith v. Petkovich, 562 F. Supp. 2d 912 (N.D. Ohio 2008)
- Oregon v. Ice, 555 U.S. 160, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009)
- Almendarez-Torres v. United States, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998)
- Taylor v. United States, 495 U.S. 575, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990)
- Ryle v. State, 842 N.E.2d 320 (Ind. 2005)
- People v. McGee, 38 Cal. 4th 682, 42 Cal. Rptr. 3d 899, 133 P.3d 1054 (2006)
- State v. Pierce, 188 N.J. 155, 902 A.2d 1195 (2006)
- People v. Huber, 139 P.3d 628 (Colo. 2006)
- State v. Fagan, 280 Conn. 69, 905 A.2d 1101 (2006)
- State v. Jones, 159 Wash. 2d 231, 149 P.3d 636 (2006)