

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Whitmore

590 Pa. 376 (Pa. 2006) · Decided December 29, 2006

SUMMARY

The Supreme Court of Pennsylvania held that the Superior Court exceeded its authority by sua sponte removing the sentencing judge from a resentencing proceeding. The court explained that any recusal request should first be presented to the judge whose recusal is sought, whose decision is reviewed for abuse of discretion. The court reversed that portion of the Superior Court’s decision and remanded for resentencing before the original judge.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Newman; Chief Justice Cappy; Justice Castille; Justice Saylor; Justice Eakin; Justice Baer; Justice Baldwin
JURISDICTION	Pennsylvania
DECIDED	December 29, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth appealed from a Superior Court decision in a PCRA proceeding that reversed dismissal of Whitmore's amended PCRA petition and ordered that a different judge preside over resentencing. The Pennsylvania Supreme Court granted allowance of appeal limited to whether the Superior Court exceeded its authority by sua sponte removing the sentencing judge.
STANDARD OF REVIEW	A trial judge's decision concerning recusal is reviewed for abuse of discretion. The Supreme Court also reviewed whether the Superior Court exceeded its supervisory authority by sua sponte removing the sentencing judge.
PRECEDENTIAL VALUE	Published Pennsylvania Supreme Court opinion; precedential.
PARTIES	Commonwealth of Pennsylvania v. Raheem Whitmore

TOPICS

- appellate procedure
- criminal procedure
- sentencing
- post-conviction relief
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

post-conviction relief

QUESTIONS PRESENTED

1. Whether the Superior Court exceeded its authority by sua sponte removing the sentencing judge from the resentencing proceeding when no party had requested recusal and the judge had not ruled on a recusal motion.
2. Whether the appropriate procedure required any recusal request to be presented initially to the sentencing judge, subject to review for abuse of discretion.

HOLDINGS

1. The Superior Court exceeded its authority by sua sponte removing Judge Maier from the resentencing proceeding when no party had raised recusal and the judge had not been given the opportunity to address the issue.
2. A party seeking disqualification must file a recusal motion with the judge whose recusal is sought; that judge must decide the motion in the first instance, and the decision will not be disturbed absent an abuse of discretion.

KEY QUOTATIONS

“Ultimately, the sua sponte removal of the trial court judge on remand for sentencing exceeded the authority of the Superior Court.” (835)

“The parties are required to file a motion to recuse and for the judge in question to rule; his or her decision must stand absent an abuse of discretion.” (835)

FACTUAL BACKGROUND

Police officers observed Whitmore conduct a hand-to-hand exchange of crack cocaine for cash in a Philadelphia alley. After the officers approached, Whitmore discarded two vials of crack cocaine and \$75 and fled; officers apprehended him and recovered the discarded items. A jury convicted him of possession and possession with intent to deliver, and the trial court imposed a ten-to-twenty-year sentence based in part on his prior drug conviction.

PROCEDURAL HISTORY

A jury convicted Whitmore of possession of a controlled substance and possession with intent to deliver, and Judge Eugene E.J. Maier imposed an aggregate sentence of ten to twenty years. The Superior Court initially affirmed, and the Pennsylvania Supreme Court denied allowance of appeal. In a subsequent PCRA proceeding, the PCRA court dismissed Whitmore's amended petition without a hearing, but the Superior Court reversed and ordered resentencing before a different judge. The Pennsylvania Supreme Court reversed that portion of the Superior Court's decision and remanded for resentencing before Judge Maier.

DISPOSITION

REMAND INSTRUCTIONS

The portion of the Superior Court's decision ordering removal of Judge Maier is reversed. The case is remanded to Judge Maier for resentencing in accordance with the remainder of the Superior Court's opinion. No recusal motion was filed, so the remand does not require consideration of a recusal motion or development of a recusal record.

CASES CITED

- Commonwealth v. Whitmore, 584 Pa. 436, 884 A.2d 247 (2005)
- Commonwealth v. Bracey, 568 Pa. 264, 795 A.2d 935 (2001)
- Commonwealth v. Hernandez, 755 A.2d 1 (Pa. Super. Ct. 2000)
- Commonwealth v. Mouzon, 571 Pa. 419, 812 A.2d 617 (2002)
- Commonwealth v. Pierce, 567 Pa. 186, 786 A.2d 203 (2001)
- Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726 (2002)
- Commonwealth v. Goggins, 748 A.2d 721 (Pa. Super. Ct. 2000)
- In re Avellino, 547 Pa. 385, 690 A.2d 1138 (1997)
- In re McFalls, 568 Pa. 228, 795 A.2d 367 (2002)
- Reilly v. Se. Pa. Transp. Auth., 507 Pa. 204, 489 A.2d 1291 (1985)
- Commonwealth v. Travaglia, 541 Pa. 108, 661 A.2d 352 (1995)
- Commonwealth v. Knighton, 490 Pa. 16, 415 A.2d 9 (1980)
- Commonwealth v. Abu-Jamal, 553 Pa. 485, 720 A.2d 79 (1998)
- Commonwealth v. Darush, 501 Pa. 15, 459 A.2d 727 (1983)
- In Interest of McFall, 533 Pa. 24, 617 A.2d 707 (1992)
- Commonwealth v. Tharp, 574 Pa. 202, 830 A.2d 519 (2003)
- Commonwealth v. White, 557 Pa. 408, 734 A.2d 374 (1999)
- Commonwealth v. Druce, 577 Pa. 581, 848 A.2d 104 (2004)