

SUPREME COURT OF VERMONT

State v. Koons, 2011 VT 22

20 A.3d 662 (Vt. 2011) · No. No. 10-079 · Decided February 10, 2011

SUMMARY

The Vermont Supreme Court held that the trial court committed plain error by relying at sentencing on conduct underlying a prior acquittal without providing advance notice or an opportunity to respond under Vermont Rule of Criminal Procedure 32(c)(3). The court found that the undisclosed acquitted conduct materially influenced the sentence and vacated the sentence, remanding for resentencing before a different judge. The court did not reach the defendant's gross-disproportionality challenge.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Johnson, J.; Reiber, C.J.; Dooley, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	February 10, 2011
DOCKET	No. 10-079
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed the sentence imposed after convictions for sexual assault on a minor and lewd or lascivious conduct with a child.
STANDARD OF REVIEW	Sentencing decisions are reviewed for abuse of discretion and will be affirmed if within statutory limits and not derived from improper or inaccurate information. Because defendant did not object at sentencing, the alleged error was reviewed for plain error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Terry L. Koons, Jr. v. State of Vermont

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether the sentencing court committed plain error by relying on conduct underlying a prior acquittal without advance notice and an opportunity for defendant to rebut the information.
2. Whether defendant's sentence was grossly disproportionate to the offenses.

HOLDINGS

1. The sentencing court committed plain error by materially relying on undisclosed conduct underlying a prior acquittal without providing defendant advance notice and a reasonable opportunity to rebut the information as required by Vermont Rule of Criminal Procedure 32(c)(3). The error required vacatur of the sentence and resentencing before a different judge.

KEY QUOTATIONS

"We conclude, similarly, that the trial court's reliance here on undisclosed acquitted conduct without the safeguards of Rule 32(c)(3) is precisely the kind of error that may impair the integrity of the judicial process and tarnish its reputation for fairness." (20 A.3d 667-68)

"The sentence is vacated, and the cause is remanded for resentencing before a different judge." (20 A.3d 668)

FACTUAL BACKGROUND

Defendant was convicted of sexual assault on a minor and lewd or lascivious conduct with a child arising from sexual conduct involving two fifteen-year-old girls when defendant was nineteen. The presentence investigation report described defendant's criminal record and recommended a substantial prison sentence. At sentencing, the prosecutor urged the court to rely on conduct underlying an earlier sexual-assault prosecution that had ended in acquittal, and the court found by clear and convincing evidence that the prior conduct had occurred. The court expressly relied on that finding in imposing a significant sentence without giving defendant prior notice or an opportunity to respond.

PROCEDURAL HISTORY

A jury convicted defendant of both offenses. At sentencing, the trial court relied in part on conduct underlying an earlier acquittal without providing advance notice or an opportunity to rebut that information, and imposed an aggregate sentence of six to twenty-five years to serve. The Vermont Supreme Court reviewed the unpreserved sentencing objection for plain error, vacated the sentence, and remanded for resentencing before a different judge.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for resentencing before a different judge.

CASES CITED

- State v. Ingerson, 2004 VT 36, 176 Vt. 428, 852 A.2d 567
- State v. Ramsay, 146 Vt. 70, 78, 499 A.2d 15, 20 (1985)
- State v. Yoh, 2006 VT 49A, 180 Vt. 317, 910 A.2d 853
- State v. Pellerin, 164 Vt. 376, 670 A.2d 255 (1995)
- United States v. Dunigan, 555 F.3d 501, 506 (5th Cir. 2009)
- United States v. Phaneuf, 91 F.3d 255, 263 (1st Cir. 1996)
- United States v. Lovelace, 565 F.3d 1080, 1092-93 (8th Cir. 2009)
- United States v. Hayes, 171 F.3d 389, 395 (6th Cir. 1999)
- United States v. Valentine, 21 F.3d 395, 398 (11th Cir. 1994)
- United States v. Curran, 926 F.2d 59, 63-64 (1st Cir. 1991)
- United States v. Craven, 239 F.3d 91, 103 (1st Cir. 2001)
- In re Meunier, 145 Vt. 414, 423, 491 A.2d 1019, 1025 (1985)
- State v. Neale, 145 Vt. 423, 436, 491 A.2d 1025, 1033 (1985)
- United States v. Watts, 519 U.S. 148, 117 S. Ct. 633, 136 L. Ed. 2d 554 (1997)
- People v. Ewing, 435 Mich. 443, 458 N.W.2d 880, 893 n.15 (1990)
- United States v. White, 551 F.3d 381, 392 (6th Cir. 2008)
- United States v. Canania, 532 F.3d 764, 777 (8th Cir. 2008)
- State v. Cote, 129 N.H. 358, 530 A.2d 775, 784 (1987)
- Bishop v. State, 268 Ga. 286, 486 S.E.2d 887, 897 (1997)
- State v. Marley, 321 N.C. 415, 364 S.E.2d 133, 139 (1988)
- State v. Grega, 168 Vt. 363, 386, 721 A.2d 445, 461 (1998)