

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Daye v. McBride, 222 W. Va. 17

658 S.E.2d 547 (2007) · No. Nos. 33100, 33101 · Decided June 27, 2007

SUMMARY

The Supreme Court of Appeals of West Virginia considered whether a trial court could correct an initial sentence imposed under the Uniform Controlled Substances Act and replace it with a mandatory life sentence under the habitual offender statute. The court held that, after the statutory recidivist procedures were completed, the initial sentence was illegal and the trial court properly corrected it under Rule 35(a). The court affirmed in part and remanded for appointment of counsel and further proceedings on unresolved habeas corpus issues.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Starcher, J.
JURISDICTION	West Virginia
DECIDED	June 27, 2007
DOCKET	Nos. 33100, 33101
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of a state habeas corpus petition challenging correction of an original sentence and imposition of a mandatory life sentence under West Virginia's habitual-offender statute.
STANDARD OF REVIEW	The final habeas order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Appeals of West Virginia.
PARTIES	Cornell F. Daye v. Thomas McBride, Warden, Mount Olive Correctional Center

TOPICS

- sentencing
- habeas corpus
- state post-conviction relief
- statutory interpretation
- appellate procedure

PRACTICE AREAS

criminal procedure

sentencing

habeas corpus

statutory interpretation

post-conviction relief

QUESTIONS PRESENTED

1. Whether West Virginia's mandatory habitual-offender life-sentence statute, West Virginia Code section 61-11-18, applies when the current conviction is a drug offense subject to the discretionary enhancement provision of West Virginia Code section 60A-4-408.
2. Whether the circuit court's original sentence was illegal and therefore correctable under West Virginia Rule of Criminal Procedure 35(a).
3. Whether the circuit court properly denied the habeas petition summarily and whether unresolved habeas issues should be remanded for appointment of counsel and further proceedings.

HOLDINGS

1. When a person is convicted under the Uniform Controlled Substances Act of an offense punishable by confinement in a state correctional facility, and the recidivist procedures in West Virginia Code section 61-11-19 establish prior qualifying felony convictions, the court must impose the life sentence required by section 61-11-18, notwithstanding the second-or-subsequent-offense provisions of section 60A-4-408.
2. Because the recidivist information was timely filed and Daye admitted the prior convictions, the circuit court was required to impose the section 61-11-18 life sentence. The original two-to-thirty-year sentence was illegal and could be corrected under West Virginia Rule of Criminal Procedure 35(a).
3. The case must be remanded for appointment of counsel and further proceedings on habeas issues not decided in the opinion.

KEY QUOTATIONS

“when any person is convicted of an offense under the Uniform Controlled Substances Act (W.Va Code, Chapter 60A) and is subject to confinement in the state correctional facility therefor, and it is further determined, as provided in W.Va.Code, 61-11-19 (1943) that such person has been before convicted in the United States of a crime or crimes, including crimes under the Uniform Controlled Substances Act (W.Va.Code, Chapter 60A), punishable by confinement in a penitentiary, the court shall sentence the person to confinement in the state correctional facility pursuant to the provisions of W.Va.Code, 61-11-18 (2000), notwithstanding the second or subsequent offense provisions of W.Va.Code, 60A-4-408 (1971).” (658 S.E.2d at 554)

“In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review.” (658 S.E.2d at 551)

FACTUAL BACKGROUND

Daye was convicted in Raleigh County of possession of crack cocaine with intent to deliver, second or subsequent offense. Before sentencing, the State filed a recidivist information alleging two prior felony

convictions, and Daye admitted in open court that he was the person named in those convictions after being advised that he could receive a life sentence. The circuit court initially sentenced him to two to thirty years under West Virginia Code section 60A-4-408, then corrected that sentence to life imprisonment under section 61-11-18 after the State moved under Rule 35(a).

PROCEDURAL HISTORY

Daye was convicted of possession of crack cocaine with intent to deliver, second or subsequent offense. After Daye admitted two prior felony convictions, the circuit court initially imposed a two-to-thirty-year sentence under the Uniform Controlled Substances Act, but later granted the State's Rule 35(a) motion and corrected the sentence to life imprisonment under West Virginia Code section 61-11-18. Daye's direct appeal was denied in 2003. The circuit court summarily denied his 2004 habeas petition and denied appointment of counsel; the Supreme Court of Appeals accepted the appeal, affirmed the sentencing ruling in part, and remanded unresolved habeas issues for appointment of counsel and further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirmed in part as to the correction of the sentence and remanded in part for appointment of counsel and further proceedings on all habeas corpus issues not decided in the opinion.

CASES CITED

- Mathena v. Haines, 219 W. Va. 417, 633 S.E.2d 771 (2006)
- Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 (1970)
- State ex rel. Cobb v. Boles, 149 W. Va. 365, 141 S.E.2d 59 (1965)
- State ex rel. Combs v. Boles, 151 W. Va. 194, 151 S.E.2d 115 (1966)
- State ex rel. Williams v. Riffe, 127 W. Va. 573, 34 S.E.2d 21 (1945)
- Sellers v. Broadwater, 176 W. Va. 232, 342 S.E.2d 198 (1986)
- State ex rel. Roberts v. Tucker, 143 W. Va. 114, 100 S.E.2d 550 (1957)
- UMWA by Trumka v. Kingdon, 174 W. Va. 330, 325 S.E.2d 120 (1984)
- Griffin v. Warden, West Virginia State Penitentiary, 517 F.2d 756 (4th Cir. 1975)
- Buff v. State, 538 P.2d 1117, 1975 OK CR 129 (Okla. Crim. App. 1975)
- State v. Loudermilk, 221 Kan. 157, 557 P.2d 1229 (1976)
- Blunt v. State, 743 P.2d 145, 1987 OK CR 201 (Okla. Crim. App. 1987)
- State v. Ray, 166 Wis. 2d 855, 481 N.W.2d 288 (1992)
- Chambers v. State, 522 So. 2d 311 (Ala. Crim. App. 1986)
- Lloyd v. State, 139 Ga. App. 625, 229 S.E.2d 106 (1976)
- People v. Fetterley, 229 Mich. App. 511, 583 N.W.2d 199 (1998)

- State v. Chapman, 205 Neb. 368, 287 N.W.2d 697 (1980)
- State v. Heyward, 90 N.M. 780, 568 P.2d 616 (1977)

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