

COURT OF APPEALS OF OREGON

City of Lowell v. Wilson, 197 Or. App. 291

105 P.3d 856 (2005) · No. A118815; 25-01-22853 · Decided February 2, 2005

SUMMARY

The Oregon Court of Appeals dismissed an appeal arising from a defendant's no-contest convictions in Lowell Municipal Court for violations of a city ordinance concerning a dangerous building. The court held that it lacked jurisdiction under ORS 221.360 because the defendant had not preserved a cognizable constitutional challenge, and it concluded that ORS 138.050 did not provide an independent jurisdictional basis for appeals involving municipal code violations. The court also addressed the relationship between Oregon's municipal-court appellate statutes and general criminal appellate jurisdiction.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Haselton, Presiding Judge; Linder, Judge; Ortega, Judge
JURISDICTION	Oregon
DECIDED	February 2, 2005
DOCKET	A118815; 25-01-22853
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant appealed to the Oregon Court of Appeals from a Lane County Circuit Court judgment dismissing her appeal from a Lowell Municipal Court judgment entered after her no-contest pleas to 324 municipal ordinance violations.
STANDARD OF REVIEW	The court reviewed its own statutory appellate jurisdiction as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Toshiko Wilson v. City of Lowell

TOPICS

- appellate jurisdiction
- appellate procedure
- municipal law
- statutory interpretation
- legislative history

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Oregon Court of Appeals had jurisdiction under ORS 221.360 to review Wilson's challenges to her municipal ordinance convictions when she had not preserved a cognizable facial or as-applied constitutional challenge in the municipal court or circuit court.
2. Whether ORS 138.050 provided an independent source of appellate jurisdiction for excessive-sentence challenges arising from a no-contest conviction for a municipal code violation in a municipal court that was not a court of record.
3. Whether ORS 138.057 superseded or supplemented ORS 221.359 and ORS 221.360 for appeals from municipal court convictions for municipal code violations.
4. Whether the court could reach Wilson's challenges to the municipal court's authority, the amount of the fines, or the due-process issue raised for the first time on appeal.

HOLDINGS

1. The Court of Appeals lacked jurisdiction under ORS 221.360 because Wilson did not preserve a cognizable facial or as-applied constitutional challenge to the municipal ordinance in the municipal court or circuit court.
2. ORS 138.050 did not provide appellate jurisdiction for Wilson's excessive-sentence challenges because the statute does not apply to appeals arising from convictions in a non-record municipal court for municipal code violations.
3. ORS 138.057 did not supersede or apply to this appeal; ORS 221.359 and ORS 221.360, as the more specific provisions governing municipal code convictions, controlled.

KEY QUOTATIONS

"In addressing appellate jurisdiction, we emphasize that our jurisdiction is not plenary. Rather, the sole source of appellate jurisdiction is statutory." (197 Or. App. 291, 297)

"We thus conclude that ORS 138.057 does not apply. Rather, where, as here, such a conviction was entered by a municipal court that was not a court of record, the sole potential source of our jurisdiction is ORS 221.360 as construed in Polanski." (197 Or. App. 291, 308)

FACTUAL BACKGROUND

Wilson owned a building in Lowell that was damaged by fire in June 1996. The city determined that the building was dangerous and ordered Wilson to repair and clean the site or demolish it. After Wilson failed to comply to the city's satisfaction, the city filed 324 municipal complaints, one for each day of alleged violation, seeking \$81,000 in fines; Wilson ultimately pleaded no contest and demolished the building as a condition of suspension of most of the imposed fines.

PROCEDURAL HISTORY

The Lowell Municipal Court entered convictions and imposed fines and assessments totaling \$27,540, with most of the amount suspended on the condition that Wilson demolish the damaged building. Wilson appealed to the Lane County Circuit Court, which denied her motion to reverse and vacate and entered a judgment dismissing the appeal with prejudice. Wilson then appealed to the Oregon Court of Appeals, raising jurisdictional, excessive-fine, and constitutional arguments.

DISPOSITION

dismissed

CASES CITED

- City of Portland v. Duntley, 185 Or. 365, 203 P.2d 640 (1949)
- City of Klamath Falls v. Winters, 289 Or. 757, 619 P.2d 217 (1980)
- McCargar v. Moore, 89 Or. 597, 175 P. 77 (1918)
- State v. Belzons, 140 Or. App. 198, 915 P.2d 428 (1996), rev. den., 324 Or. 513, 930 P.2d 853 (1997)
- City of Salem v. Polanski, 202 Or. 504, 276 P.2d 407 (1954)
- City of Salem v. Bruner, 299 Or. 262, 702 P.2d 70 (1985)
- City of Eugene v. Lee, 177 Or. App. 492, 34 P.3d 690 (2001)
- City of Eugene v. Lincoln, 183 Or. App. 36, 50 P.3d 1253 (2002)
- Stephens v. Bohlman, 314 Or. 344, 838 P.2d 600 (1992)
- City of Lake Oswego v. Mylander, 301 Or. 178, 721 P.2d 433 (1986)
- Oregonians for Sound Economic Policy v. SAIF, 187 Or. App. 621, 69 P.3d 742 (2003), rev. den., 336 Or. 60, 77 P.3d 635 (2003)
- State v. Langdon, 330 Or. 72, 999 P.2d 1127 (2000)
- State v. Shumway, 291 Or. 153, 630 P.2d 796 (1981)
- State v. Johnston, 176 Or. App. 418, 31 P.3d 1101 (2001)
- State v. Thompson-Seed, 162 Or. App. 483, 986 P.2d 732 (1999)