

SUPREME COURT OF NEW HAMPSHIRE

State v. Gaylor, 158 N.H. 230

969 A.2d 333 (2009) · No. 2007-446 · Decided January 9, 2009

SUMMARY

The Supreme Court of New Hampshire held that Gregory Gaylor was not entitled to reinstate an appeal dismissed under the fugitive disentitlement rule after he absconded during trial and remained a fugitive during the appellate period. The court also declined to accept his later appeal as untimely and discretionary, concluding that his sentence amendment did not revive appellate rights.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Dalianis, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	January 9, 2009
DOCKET	2007-446
DISPOSITION	other
PROCEDURAL POSTURE	The defendant sought reinstatement of a previously dismissed criminal appeal and appellate review of issues relating to his convictions and sentences. The Supreme Court considered whether the appeal was barred by fugitive disentitlement, untimely, or otherwise discretionary and declined to accept the appeal.
STANDARD OF REVIEW	The court applied the fugitive disentitlement rule and reviewed whether reinstatement was warranted under the court's discretionary authority. It also applied the applicable appellate filing and jurisdiction rules to determine timeliness and whether the appeal was mandatory or discretionary.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Gregory A. Gaylor v. State of New Hampshire

TOPICS

- appellate procedure
- criminal procedure
- post-conviction relief
- preservation of error

PRACTICE AREAS

criminal procedure

appellate procedure

post-conviction relief

QUESTIONS PRESENTED

1. Whether Gaylor's previously dismissed appeal should be reinstated after he returned to custody and asserted insufficient-evidence and actual-innocence claims.
2. Whether the 2007 appeal was timely based on a purported 2007 amendment or notice concerning his sentences.
3. Whether the appeal concerning the 2006 sentence amendment was mandatory or discretionary and whether the Supreme Court should accept it.

HOLDINGS

1. A defendant who absents himself from the jurisdiction during the appellate period forfeits the right to appellate review, and Gaylor's appeal would not be reinstated because no extraordinary equities relating to the merits justified departing from that rule.
2. The appeal was not timely because the relevant sentence amendment occurred in May 2006, and any appellate rights arising from that order expired more than a year before Gaylor filed the appeal.
3. The appeal concerning the 2006 sentence amendment was discretionary rather than mandatory, and the Supreme Court declined to accept it.

KEY QUOTATIONS

"Because the defendant elected to absent himself from the jurisdiction during the period of appeal, he forfeited the right to appellate review." (338)

"Reinstatement of appeal in docket no. 99-452 is denied; remaining issues in docket no. 2007-446 are declined." (338)

FACTUAL BACKGROUND

Gaylor was indicted on multiple theft charges and a New Hampshire business-profits-tax evasion charge arising from his involvement in a business partnership. He fled while the jury was deliberating, was convicted in absentia on more than 100 counts, and received a fourteen-and-one-half-to-twenty-nine-year prison sentence plus substantial restitution. His attorneys filed an appeal while he was a fugitive, but the Supreme Court dismissed it; after his later extradition and repeated collateral challenges, he sought reinstatement nearly nine years after the dismissal.

PROCEDURAL HISTORY

Gaylor was convicted in Merrimack County Superior Court in 1999 on more than 100 theft counts and one tax-evasion count and was sentenced in absentia. He absconded while the jury was deliberating, and the Supreme Court dismissed his 1999 appeal under the fugitive disentitlement rule. After his arrest and extradition, he

repeatedly sought relief, including reconsideration and habeas relief. In 2007 he filed the present appeal, which the Supreme Court declined to reinstate or accept.

DISPOSITION

other

CASES CITED

- Ortega-Rodriguez v. United States, 507 U.S. 234 (1993)
- Estelle v. Dorrough, 420 U.S. 534 (1975) (per curiam)
- Eisler v. United States, 338 U.S. 189 (1949) (per curiam)
- Smith v. United States, 94 U.S. 97 (1876)
- United States v. Puzzanghera, 820 F.2d 25 (1st Cir. 1987), cert. denied, 484 U.S. 900 (1987)
- State v. Patten, 134 N.H. 319, 591 A.2d 1329 (1991)
- Commonwealth v. Hurley, 391 Mass. 76, 461 N.E.2d 754 (1984)
- Commonwealth v. Cobb, 379 Mass. 456, 405 N.E.2d 97 (1980)
- Massachusetts v. Hurley, 449 U.S. 809 (1980)
- Cuyler v. Sullivan, 446 U.S. 335 (1980)
- Commonwealth v. Hurley, 382 Mass. 690, 414 N.E.2d 1006 (1981)
- Allen v. Georgia, 166 U.S. 138 (1897)
- Molinaro v. New Jersey, 396 U.S. 365 (1970) (per curiam)
- State v. Brenes, 151 N.H. 11, 846 A.2d 1211 (2004)