

SUPREME COURT OF COLORADO

Moore v. People, 2014 CO 8

318 P.3d 511 (Colo. 2014) · Decided February 3, 2014

SUMMARY

The Colorado Supreme Court held that a defendant's challenge to the knowing, voluntary, and intelligent waiver of the constitutional right to testify is not reviewable on direct appeal and must instead be raised in a post-conviction proceeding. The court also held that a contemporaneous objection to the trial court's Curtis advisement is not required and that plain-error review does not apply. It vacated the court of appeals' discussion and ruling on the waiver issue while otherwise upholding the judgment of conviction.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hobbs; Justice Coats; Justice Eid
JURISDICTION	Colorado
DECIDED	February 3, 2014
DISPOSITION	other
PROCEDURAL POSTURE	Colorado granted certiorari to review the court of appeals' consideration of Moore's direct-appeal challenge to the validity of his waiver of the constitutional right to testify and its application of plain-error review.
STANDARD OF REVIEW	A challenge to the validity of a waiver of the right to testify raised in a post-conviction proceeding presents a question of law subject to de novo review. Plain-error review on direct appeal based on the defendant's failure to contemporaneously object to the advisement is inapplicable.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Colorado
PARTIES	Lessell Moore v. People

TOPICS

right to counsel state post-conviction relief appellate procedure criminal procedure due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court of appeals erred by considering on direct appeal Moore's challenge to the validity of his waiver of the right to testify.
2. Whether a defendant must make a contemporaneous objection to the trial court's Curtis advisement to preserve a challenge to the waiver of the right to testify.
3. What procedures and burdens govern a post-conviction challenge to the validity of a waiver of the right to testify.

HOLDINGS

1. A defendant's challenge to whether the waiver of the right to testify was knowing, voluntary, and intelligent is not reviewable on direct appeal; it may be raised only in a post-conviction proceeding.
2. A defendant is not required to contemporaneously object to the trial court's Curtis advisement, and plain-error review premised on the absence of such an objection does not apply.
3. In a post-conviction proceeding, the essential inquiry is whether the defendant's waiver of the right to testify was knowing, voluntary, and intelligent; the adequacy or inadequacy of the Curtis advisement is not dispositive.
4. Trial courts should continue to advise defendants of the five Curtis elements concerning the right to testify and the consequences of testifying or not testifying, but no precise wording or formula controls the ultimate validity of the waiver.

KEY QUOTATIONS

"We reaffirm that a defendant's challenge to his or her waiver of the right to testify is not subject to review on direct appeal, but only in a post-conviction proceeding. The defendant need not make a contemporaneous objection to the trial court's advisement." (515-516)

"Indeed, application of the contemporaneous objection and plain error review standards based on the defendant's failure to object during his own advisement make little sense. The very premise of such an advisement is that a defendant may not understand the nature of the right or the consequences of waiving it." (518)

"We now determine that, in either scenario-whether the advisement contained the five elements or did not contain the five elements-the essential task before the trial court on post-conviction review is to determine whether defendant's waiver of the fundamental constitutional right to testify was knowing, voluntary, and intelligent." (519)

FACTUAL BACKGROUND

Moore went to trial on charges arising from his unlawful entry into the residence of a woman who had a restraining order against him and his violent assault of another woman found inside. The jury convicted him of attempted first-degree murder, two counts of first-degree burglary, first-degree assault, attempted sexual assault,

menacing, and violation of a protection order. Because Moore had four prior felony convictions, he was sentenced as a habitual offender to 224 years. During trial, the court gave a Curtis advisement concerning his right to testify, and Moore stated that he would follow his attorneys' advice and would not testify.

PROCEDURAL HISTORY

Moore was convicted after a jury trial and sentenced as a habitual offender. On direct appeal, he argued that an allegedly defective Curtis advisement rendered his waiver of the right to testify unknowing and involuntary. The court of appeals considered the issue, applied plain-error review, rejected the challenge, and otherwise upheld the conviction while ordering vacation of a first-degree-burglary assault/menacing conviction. The Colorado Supreme Court disapproved and vacated the court of appeals' discussion and holding concerning the waiver issue, upheld the judgment of conviction otherwise, and held that Moore could pursue the waiver claim in a post-conviction proceeding.

DISPOSITION

other

REMAND INSTRUCTIONS

Moore may raise the validity of his waiver of the right to testify in a post-conviction proceeding. The court of appeals' discussion and holding on that issue were disapproved and vacated; the judgment of conviction was otherwise upheld.

CASES CITED

- People v. Curtis, 681 P.2d 504 (Colo. 1984)
- People v. Blehm, 983 P.2d 779 (Colo. 1999)
- People v. Harding, 104 P.3d 881 (Colo. 2005)
- People v. Thomas, 867 P.2d 880, 887 (Colo. 1994)
- People v. Milton, 864 P.2d 1097, 1101 (Colo. 1993)
- People v. O'Hara, 240 P.3d 283, 291 (Colo. App. 2010)
- People v. Gibson, 203 P.3d 571, 574 (Colo. App. 2008)
- People v. Gomez, 211 P.3d 53, 55, 57 (Colo. App. 2008)
- People v. Ziglar, 45 P.3d 1266, 1268 n.4 (Colo. 2002)
- Bedor v. Johnson, 292 P.3d 924, 929 (Colo. 2013)
- People v. Montoya, 251 P.3d 35, 45 (Colo. App. 2010)
- People v. Mozee, 723 P.2d 117, 124-25 (Colo. 1986)
- People v. Simpson, 69 P.3d 79, 81 (Colo. 2003)
- White v. Denver District Court, 766 P.2d 632, 636 (Colo. 1988)
- People v. Trujillo, 190 Colo. 497, 549 P.2d 1812 (1976)
- Allen v. People, 157 Colo. 582, 404 P.2d 266 (1965)

- Johnson v. Zerbst, 304 U.S. 458, 465 (1938)

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