

SUPREME COURT OF MICHIGAN

People of the State of Michigan v. Douglas Lance Weisert

771 N.W.2d 752 (Mich. 2009) · No. Docket Nos. 137921, 137922; COA Nos. 276150, 282322 · Decided September 11, 2009

SUMMARY

The Supreme Court of Michigan denied Douglas Lance Weisert's applications for leave to appeal from a Court of Appeals judgment concerning the treatment of predicate felony convictions underlying a felony-murder conviction. Chief Justice Kelly concurred, stating that the law in effect at sentencing controlled and that *People v. Wilder* bound the trial court. Justice Corrigan, joined by Justice Markman, separately concurred while criticizing the Court of Appeals for disregarding the intervening decision in *People v. Ream*.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Marilyn J. Kelly, C.J.; Corrigan, J.; Markman, J.; Hathaway, J.
JURISDICTION	Michigan
DECIDED	September 11, 2009
DOCKET	Docket Nos. 137921, 137922; COA Nos. 276150, 282322
DISPOSITION	other
PROCEDURAL POSTURE	The Michigan Supreme Court denied the defendant's application for leave to appeal from the Michigan Court of Appeals' November 20, 2008 judgment.
STANDARD OF REVIEW	Whether to grant discretionary review; the application for leave to appeal was denied without merits review.
PRECEDENTIAL VALUE	Published order; substantive statements in the separate concurrences are nonbinding.
PARTIES	Douglas Lance Weisert v. People of the State of Michigan

TOPICS

- sentencing
- appellate procedure
- criminal procedure
- appellate jurisdiction

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Michigan Supreme Court should grant leave to appeal from the Court of Appeals' decision concerning correction of defendant's judgment of sentence and vacation of the predicate felony convictions.
2. Whether the Court of Appeals properly declined to apply *People v. Ream*, which was decided after defendant's sentencing but before the Court of Appeals issued its opinion.

HOLDINGS

1. The Michigan Supreme Court denied defendant's application for leave to appeal because it was not persuaded that the questions presented should be reviewed.
2. In Chief Justice Kelly's nonbinding concurrence, she stated that the law in effect when the crimes were committed governs sentencing, that *Wilder* controlled when defendant was sentenced, and that the Court of Appeals therefore should not have relied on *Ream*, which was decided later.
3. In Justice Corrigan's nonbinding concurrence, she stated that if the Court of Appeals believed *Ream* did not govern because it was decided after sentencing, it should at least have acknowledged *Ream* and explained why it did not apply.

KEY QUOTATIONS

"The law in effect at the time a defendant committed his or her crimes is the law to be applied with respect to sentencing for those crimes." (753)

"Until this Court explicitly overrules a decision, that decision binds trial courts." (753)

*"If the Court of Appeals shared Chief Justice Kelly's view that *Ream* does not govern, then it should have at the very least acknowledged the existence of a recent decision directly addressing the very issue before the Court and explained why and how it concluded that this precedent did not apply."* (753)

FACTUAL BACKGROUND

Defendant had been sentenced for crimes including felony murder and predicate felony offenses. *People v. Wilder* was controlling when defendant was sentenced, but *People v. Smith* later questioned *Wilder* and *People v. Ream* subsequently overruled *Wilder*. The Court of Appeals remanded for correction of the judgment to reflect that the predicate offenses had been vacated.

PROCEDURAL HISTORY

The Court of Appeals directed the trial court to vacate the predicate felony convictions underlying defendant's felony-murder conviction and remanded for correction of the judgment of sentence. Defendant sought leave to appeal in the Michigan Supreme Court, which denied review because it was not persuaded that the questions presented should be reviewed. Chief Justice Kelly and Justice Corrigan filed separate concurring statements addressing the Court of Appeals' treatment of intervening precedent.

DISPOSITION

other

CASES CITED

- People v. Ream, 481 Mich. 223, 750 N.W.2d 536 (2008)
- People v. Wilder, 411 Mich. 328, 308 N.W.2d 112 (1981)
- People v. Doxey, 263 Mich. App. 115, 116-117, 687 N.W.2d 360 (2004)
- People v. Smith, 478 Mich. 292, 733 N.W.2d 351 (2007)

OPINION

PER CURIAM.

771 N.W.2d 752 (2009) PEOPLE of the State of Michigan, Plaintiff-Appellee, v. Douglas Lance WEISSERT, Defendant-Appellant. Docket Nos. 137921, 137922. COA Nos. 276150, 282322. Supreme Court of Michigan. September 11, 2009. Order On order of the Court, the application for leave to appeal the November 20, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MARILYN J. KELLY, C.J. (concurring). I concur in the Court's order denying defendant's application for leave to appeal. I write separately only to note that, contrary to Justice Corrigan's assertion, it was not erroneous in this case for the Court of Appeals to disregard our recent decision in People v. Ream.[1] At the time of defendant's sentencing, People v. Wilder[2] was the controlling law.

The law in effect at the time a defendant committed his or her crimes is the law to be applied with respect to sentencing for those crimes.[3] Therefore, the Court of Appeals was bound to affirm defendant's sentence because it was legal when imposed.

Although Ream later overruled Wilder, Ream was decided long after defendant was sentenced. Thus, the Court of Appeals should not have relied on Ream. With respect to Justice Corrigan's mention *753 of People v. Smith,[4] it is wholly irrelevant that, before the trial court resentenced defendant, our Court "questioned" Wilder in Smith. Our trial courts are not blessed with the gift of prescience.

Until this Court explicitly overrules a decision, that decision binds trial courts. Thus, the trial court in this case was bound by Wilder when it sentenced defendant, and the Court of Appeals correctly remanded this case for correction of the judgment of sentence to reflect that the predicate offenses have been vacated. HATHAWAY, J., joins the statement of KELLY, C.J. CORRIGAN, J. (concurring).

I write separately only to observe that the Court of Appeals disregarded our recent decision in *People v. Ream*, 481 Mich. 223, 750 N.W.2d 536 (2008), when it directed the trial court to vacate the predicate felony convictions underlying defendant's felony-murder conviction. Nonetheless, because the prosecutor has not filed a cross-appeal raising this issue, I concur in the denial of leave to appeal.

Chief Justice Kelly opines that the Court of Appeals properly ignored our recent holding in *Ream* because it was decided after defendant was sentenced. But *Ream* was decided before the Court of Appeals issued its opinion. If the Court of Appeals shared Chief Justice Kelly's view that *Ream* does not govern, then it should have at the very least acknowledged the existence of a recent decision directly addressing the very issue before the Court and explained why and how it concluded that this precedent did not apply.[5] MARKMAN, J., joins the statement of CORRIGAN, J. NOTES [1] *People v. Ream*, 481 Mich. 223, 750 N.W.2d 536 (2008).

[2] *People v. Wilder*, 411 Mich. 328, 308 N.W.2d 112 (1981). [3] *People v. Doxey*, 263 Mich.App. 115, 116-117, 687 N.W.2d 360 (2004). [4] *People v. Smith*, 478 Mich. 292, 733 N.W.2d 351 (2007). [5] Moreover, it is noteworthy that the sentences for the predicate felony convictions were imposed after this Court's decision in *People v. Smith*, 478 Mich. 292, 318 n. 16, 733 N.W.2d 351 (2007), which explicitly questioned the analysis in *People v. Wilder*, 411 Mich. 328, 308 N.W.2d 112 (1981), presaging our holding in *Ream*.