

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*.

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*.