

COURT OF APPEALS OF OREGON

Franklin v. State

109 Or. App. 274 (1991) · Decided October 23, 1991

SUMMARY

The Oregon Court of Appeals affirmed the denial of post-conviction relief from felony convictions for driving while suspended and driving in violation of a habitual traffic offender order. Although the state conceded that an earlier misdemeanor conviction was based on defective suspension notices and had properly been set aside, the court held that the petitioner was procedurally barred from challenging the predicate conviction in post-conviction proceedings because he could have raised the issue at the felony trials. The court also held that the defective notices did not deprive the trial court of jurisdiction and did not constitute a constitutional violation occurring in the proceedings resulting in the felony convictions.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Deits, J.; Deits; Joseph; Richardson
JURISDICTION	Oregon
DECIDED	October 23, 1991
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner sought post-conviction relief to set aside a misdemeanor conviction and several felony convictions. The trial court set aside the misdemeanor conviction but denied relief as to the felony convictions, and petitioner appealed.
STANDARD OF REVIEW	The court reviewed whether petitioner established a statutory basis for post-conviction relief under ORS 138.530(1), including substantial denial of constitutional rights rendering the convictions void or lack of trial-court jurisdiction.
PRECEDENTIAL VALUE	published
PARTIES	Franklin v. State

TOPICS

- state post-conviction relief
- post-conviction relief
- due process
- criminal procedure

PRACTICE AREAS

state post-conviction relief

criminal procedure

constitutional law

motor vehicle offenses

QUESTIONS PRESENTED

1. Whether Franklin was entitled to post-conviction relief from the felony convictions because he failed to object at the felony trials to the defective suspension notices, despite the controlling decision in *State v. Tooley*.
2. Whether the allegedly void suspension orders and underlying convictions deprived the trial court of jurisdiction over the felony driving-while-suspended charges.
3. Whether the defective 1982 suspension notice constituted a constitutional violation occurring in the proceedings resulting in the felony convictions and therefore supported relief under ORS 138.530(1)(a).

HOLDINGS

1. A petitioner may not obtain post-conviction relief based on a claim that could reasonably have been raised at trial when the controlling legal authority was already available, absent circumstances making a contemporaneous objection inappropriate, such as excusable lack of awareness, coercion, or ineffective or bad-faith counsel. Because *State v. Tooley* had been decided before Franklin's felony trials and he did not establish an applicable exception, the failure to object barred relief.
2. The invalidity of the suspension orders or underlying convictions did not deprive the trial court of jurisdiction under ORS 138.530(1)(b). For purposes of that provision, jurisdiction concerns jurisdiction over the defendant and the charged offense, neither of which was disputed.
3. Even assuming that the defective 1982 suspension notice violated due process, the violation did not occur in the proceedings resulting in Franklin's felony convictions and therefore did not satisfy ORS 138.530(1)(a).

KEY QUOTATIONS

“This procedural rule would be completely eroded by permitting the granting of relief in post-conviction proceedings in the absence of an objection at trial.” (278)

FACTUAL BACKGROUND

In 1982, the Motor Vehicles Division sent Franklin suspension orders that did not advise him of a right to a pre-suspension hearing. Franklin later pleaded guilty to a misdemeanor driving-while-suspended charge and received additional convictions, including convictions used to establish his habitual traffic offender status. After the first 1983 misdemeanor conviction was set aside, Franklin sought to invalidate the felony convictions based on the resulting habitual traffic offender revocation order.

PROCEDURAL HISTORY

Franklin brought an action under Oregon's Post-Conviction Hearing Act challenging convictions for driving while suspended and driving in violation of a habitual traffic offender order. The trial court set aside the first

1983 misdemeanor driving-while-suspended conviction because the underlying suspension notices were defective, but refused to set aside the felony convictions. The Oregon Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Tooley, 297 Or. 602, 687 P.2d 1068 (1984)
- North v. Cupp, 254 Or. 451, 461 P.2d 271 (1969), cert. den. 397 U.S. 1054 (1970)
- Boyer v. State of Oregon, 43 Or. App. 629, 603 P.2d 1228 (1979)
- State v. Harper, 91 Or. App. 239, 754 P.2d 916 (1988)
- State v. Hardt, 81 Or. App. 607, 726 P.2d 953, adhered to 83 Or. App. 221, 730 P.2d 1278 (1986), rev. den. 303 Or. 74 (1987)