

SUPREME COURT OF OREGON

State v. Fults, 343 Or. 515

173 P.3d 822 (2007) · No. SC S054609 · Decided December 13, 2007

SUMMARY

The Oregon Supreme Court reviewed the Court of Appeals' decision to consider an unpreserved challenge to a probation sentence as plain error. It held that the Court of Appeals abused its discretion by relying solely on the state's lack of a valid interest in enforcing an unlawful sentence, without weighing other relevant factors. The court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.
JURISDICTION	Oregon
DECIDED	December 13, 2007
DOCKET	SC S054609
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review of a Court of Appeals decision that vacated defendant's sentence and remanded for resentencing after determining that the trial court had committed plain error by imposing a probation term exceeding the presumptive sentencing-guidelines term without stating substantial and compelling reasons.
STANDARD OF REVIEW	The Supreme Court reviewed the Court of Appeals' exercise of discretion under ORAP 5.45(1) for abuse of discretion, while assuming for purposes of the case that the sentencing error was plain error.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court decision issued en banc.
PARTIES	State of Oregon v. David Lester Fults

TOPICS

- preservation of error
- appellate procedure
- sentencing
- criminal procedure

PRACTICE AREAS

criminal appellate procedure

sentencing

preservation of error

QUESTIONS PRESENTED

1. Whether the Court of Appeals abused its discretion under ORAP 5.45(1) by reviewing an unpreserved sentencing error solely because the State had no valid interest in requiring defendant to serve an unlawful sentence.
2. What factors an appellate court must consider when deciding whether to exercise discretion to review an error of law apparent on the face of the record.
3. Whether the Supreme Court should decide, on this record, whether the sentencing error was invited, waived, or otherwise reviewable as plain error.

HOLDINGS

1. An appellate court may not exercise its discretion to review an unpreserved error of law apparent on the face of the record solely on the rationale that the State has no valid interest in requiring a defendant to serve an unlawful sentence. The court must consider the relevant circumstances and articulate its reasons for exercising discretion.
2. The Court of Appeals decision was reversed and the case was remanded to that court for further proceedings because its stated rationale for exercising discretion was legally insufficient.

KEY QUOTATIONS

*“Even if [a party's unpreserved] error meets th[e] test [that it be one of law, not reasonably in dispute, and apparent on the face of the record], * * * the appellate court must exercise its discretion to consider or not to consider the error, and if the court chooses to consider the error, the court must articulate its reasons for doing so.” (173 P.3d 825-26)*

“Those factors do not comprise a necessary or complete checklist; they merely are some of the permissible considerations.” (173 P.3d 826)

FACTUAL BACKGROUND

Defendant was convicted of manufacture of a controlled substance, reckless driving, driving under the influence of intoxicants, felon in possession of a firearm, and criminal trespass with a firearm. The trial court imposed 36 months of supervised probation on the manufacture conviction, although the presumptive sentence was 24 months, in order to make the probation terms concurrent and equal to the term imposed for the felon-in-possession conviction. Defense counsel affirmatively stated that there was no objection, and counsel sought minimal jail time so defendant could pursue vocational rehabilitation. Defendant later challenged the probation term as an unlawful departure sentence.

PROCEDURAL HISTORY

Defendant was convicted in two criminal cases and received, among other sanctions, a 36-month probation term on a controlled-substance-manufacture conviction, despite a presumptive 24-month term. Defense counsel expressly stated that there was no objection to the sentence. On appeal, defendant acknowledged the issue was unpreserved and invited review for plain error. The Court of Appeals accepted the invitation, rejected waiver and invited-error arguments, vacated the sentence, and remanded. The Oregon Supreme Court reversed that decision and remanded to the Court of Appeals for further consideration of whether to exercise discretion to review the unpreserved claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals was directed to reconsider whether to exercise discretion to review defendant's unpreserved sentencing claim, weighing all relevant factors and articulating an adequate basis for its decision. It could reach the same result only if it justified the exercise of discretion on a proper basis.

CASES CITED

- State v. Fults, 210 Or. App. 150, 149 P.3d 1248 (2006)
- Ailes v. Portland Meadows, Inc., 312 Or. 376, 823 P.2d 956 (1991)
- State v. Gornick, 340 Or. 160, 130 P.3d 780 (2006)
- State v. Ramirez, 205 Or. App. 113, 133 P.3d 343, adh'd to on recons., 207 Or. App. 1, 139 P.3d 981 (2006)
- State v. Ramirez, 343 Or. 505, 173 P.3d 817 (2007)