Supreme Court of the State of Washington

Opinion Information Sheet

Docket Number: 77973-2

Title of Case: In re Pers. Restraint of Beito

File Date: 11/12/2009

Oral Argument Date: 05/26/2009

SOURCE OF APPEAL

Appeal from King County Superior Court

98-1-00243-0

JUSTICES

Gerry L. Alexander Signed Majority

Charles W. Johnson Majority Author

Barbara A. Madsen Signed Majority

Richard B. Sanders Signed Majority

Tom Chambers Signed Majority

Susan Owens Signed Majority

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint	)	No. 77973-2
Petition of	)	
	)	
COREY SCOTT BEITO,	)	En Banc
	)	
Petitioner.	)	
_____	)	Filed November 12, 2009

C. JOHNSON, J. -- This case involves a challenge to an exceptional sentence imposed by the trial judge following a plea of guilty to first degree murder. The trial court found Corey Scott Beito's rape of the victim, Jessica Seim (a minor child), was the motive for and closely connected to her murder. The trial court found this fact in addition to the facts contained in the statement of probable cause, which Beito agreed could be used to determine the factual basis for his plea. Based on this additional fact-finding, the trial court imposed an exceptional sentence. After two remands to the trial court, the Court of Appeals in an unpublished opinion affirmed Beito's exceptional sentence. State v. Beito, noted at 119 Wn. App. 1056 (2003). Beito filed this personal restraint petition arguing the trial court had committed a Blakely error, which the Court of Appeals dismissed. Under our cases, the fact-

finding by the trial court in this matter was in error, as it violated Beito's Sixth Amendment rights. Where, as here, the defendant has not stipulated to facts that comprise an aggravating factor or to judicial fact-finding, the trial court must impanel a jury to find beyond a reasonable doubt that the aggravating factors exist. Although Beito did stipulate to both the murder and the rape, he did not stipulate that facts existed to support an exceptional sentence, that the rape was motive for and closely connected to the murder, or that the trial court could engage in judicial fact-finding. Under the sentencing provisions in effect at the time of Beito's crime, it was procedurally impossible for the trial court to impanel a jury to reach a constitutionally acceptable finding of aggravating factors to support Beito's exceptional sentence. Neither the 2005 nor the 2007 amendments to the applicable

sentencing provisions cured this problem, and harmless error analysis does not apply. Because the Blakely error in this case cannot be cured, we reverse and remand for resentencing within the standard range.

FACTS

In 1998, Corey Scott Beito raped and murdered Jessica Seim. Beito was

charged by information with aggravated murder in the first degree. After plea negotiations, the State amended the information to charge murder in the first degree.

On October 8, 2000, Beito pleaded guilty to one count of murder in the first degree.

Beito also admitted to rape of a child: Jessica was 14 and Beito was 27 at the time

of the rape and murder.

In the statement of defendant on plea of guilty, Beito acknowledged the State would be seeking an exceptional sentence. In accord with former RCW 9.94A.370 (2000),1 the parties stipulated that the trial court, in order to find a basis for Beito's plea and sentencing, could consider as real and material facts the information set out in the statement of defendant on plea of guilty and the certification for determination of probable cause.

The standard range for Beito's offense is 291-388 months of confinement. The State recommended an exceptional sentence of 504 months of confinement. Beito did not stipulate to an exceptional sentence; rather, he acknowledged only that the State would be seeking an exceptional sentence. In fact, Beito requested a

1 Recodified as RCW 9.94A.530 (Laws of 2001, ch. 10, § 6).

sentence in the middle of the standard range. Verbatim Report of Proceedings,

First Sentencing Hr'g (Mar. 3, 2000) at 24. In the statement of defendant on plea of guilty, subsection (g) provides "[t]he judge does not have to follow anyone's recommendation as to sentence. . . . If the judge goes outside the standard range, either [Beito] or the State can appeal that sentence."

As a basis for imposing an exceptional sentence, the State argued and the trial

court agreed that rape was an aggravating factor that supported imposing an exceptional sentence. In determining whether to impose the exceptional sentence of 504 months confinement, the trial court relied on its finding that "[t]he [r]ape was closely connected to the murder." Court's Written Findings of Fact (FF) and Conclusions of Law in Supp. of Exceptional Sentence (Apr. 2, 2002) at 2 (FF 4(B)). In FF 8, the court found that "[a] valid inference from the evidence is that the rape was a motive for, and factually connected to, the murder . . . ." Beito never stipulated to these facts; rather, the trial court found these facts in addition to the real facts for which Beito did stipulate. These facts were never put to a jury to be found beyond a reasonable doubt.

In its conclusions of law, the trial court determined that substantial and

compelling reasons existed to impose an exceptional sentence based on former RCW 9.94A.390(2) (2000)2 and former RCW 9.94A.370(2), a preponderance of evidence, and the fact that Beito stipulated to rape of a child. The trial court based this conclusion on its finding that the rape and murder were sufficiently connected. The trial court also concluded as a matter of law that insufficient evidence existed to impose an exceptional sentence on the basis of victim vulnerability or deliberate cruelty, per former RCW 9.94A.390(2)(b)(a). Ultimately, the trial court imposed an exceptional sentence of 504 months of confinement.

Beito appealed the exceptional sentence. The Court of Appeals remanded Beito's sentence twice, and both times the trial court imposed the same exceptional

sentence. The Court of Appeals affirmed the exceptional sentence following the second remand, and we denied review. Beito, noted at 119 Wn. App. 1056, review denied, 152 Wn.2d 1003 (2004).

In April 2005, Beito filed a personal restraint petition to challenge his exceptional sentence under Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531,

2 Recodified as RCW 9.94A.535 (Laws of 2001, ch. 10, § 6).

159 L. Ed. 2d 403 (2004). Blakely was issued before Beito's judgment and sentence became final. Beito asserted, among other things, that in light of Blakely, the trial court violated his Sixth Amendment right to a jury trial. The Court of

Appeals dismissed the petition, partly relying on State v. Hagar, 126 Wn. App. 320, 105 P.3d 65 (2005), rev'd, 158 Wn.2d 369, 144 P.3d 298 (2006).

Beito, now assisted by counsel, sought discretionary review in this court. The petition was initially stayed pending our decision in Hagar. The petition was again stayed pending our decision in State v. Recuenco, 163 Wn.2d 428, 180 P.3d 1276 (2008).3 Following these stays, Beito's personal restraint petition was granted only on the Blakely issue.

ISSUE

In light of Blakely, is it error for the trial court to impose an exceptional sentence based on unstipulated facts or those not proved to a jury beyond a reasonable doubt?

ANALYSIS

3 The holding in Recuenco is not applicable to this case.

The Sixth Amendment guarantees a criminal defendant the right to a jury trial.

When a court imposes an exceptional sentence predicated on an unstipulated

fact not found by a jury beyond a reasonable doubt, the court violates the

defendant's Sixth Amendment (Blakely) right. Hagar, 158 Wn.2d at 374. After

Blakely, a jury must find beyond a reasonable doubt that factual bases for

establishing the aggravating factor existed.

Where a Blakely error occurs, the defendant may challenge the imposition of an exceptional sentence pursuant to Blakely without first having to withdraw his or her plea. Hagar, 158 Wn.2d at 374 (defendant need not challenge his or her stipulation in order to establish that a Blakely violation occurred). In Hagar, the defendant stipulated to certain facts but did not stipulate that the crimes constituted a "major economic offense." There, the trial court imposed an exceptional sentence based on a finding that Hagar committed a major economic offense. We held this sentence violated Blakely because the exceptional sentence was predicated on an unstipulated fact that was not found by a jury beyond a reasonable doubt.

Similarly, Beito challenges his exceptional sentence arguing that the trial court violated Blakely by imposing such a sentence. The trial court found the rape was motive for and closely connected to the murder and that such a finding

supported imposing an exceptional sentence. But Beito did not stipulate to this fact or the imposition of an exceptional sentence. Although Beito did stipulate to the facts that led the trial court to this finding, it was an additional finding that was needed to connect the murder with the rape (i.e., an unstipulated fact not proved to a jury beyond a reasonable doubt), a finding which is controlled by Blakely. The State concedes the trial court violated Blakely in basing the exceptional sentence on this finding. State's Suppl. Resp. to Mot. for Discretionary Review at 5-6.

Having conceded the Blakely error, the State argues that, because Beito waived his right to a jury, the question before us is whether the trial court's error

was harmless. But, with respect to resolving harmless error claims for crimes occurring before 2005, we have held that, where a defendant did not waive his right to a jury trial, a Blakely error could not be deemed harmless because, under the statutes existing at the time, it would have been procedurally impossible to submit the aggravating facts to a jury for determination. In re Pers. Restraint of Hall, 163 Wn.2d 346, 181 P.3d 799 (2008). The State argues Hall is distinguishable because, unlike Hall, Beito waived his right to a jury trial. But this claim may prove too much in Beito's case.

In Hall, the sentencing court imposed an exceptional sentence based on its

own factual finding that the aggravating factors were present. The United States Supreme Court has held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, besides the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). The United States Supreme Court noted in Blakely that the "'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 542 U.S. at 303. In Hall, relying on Apprendi and Blakely, we left for another day the "issue of whether harmless error analysis applies in [Hall's] circumstances because 'we [were] convinced the error [in Hall's case] was not harmless beyond a reasonable doubt.'" Hall, 163 Wn.2d at 351 n.5 (quoting State v. Womac, 160 Wn.2d 643, 663

n.13, 160 P.3d 40 (2007)). Even though Hall's case, unlike Beito's, was submitted to a jury, it was the trial court and not the jury that determined whether aggravating

factors existed to support imposing an exceptional sentence. This additional finding by the trial court violated Hall's Apprendi/Blakely Sixth Amendment right to a jury trial. Further, Hall did not present, and we did not decide, the procedural impossibility (at the time) to obtain a jury verdict on aggravating factors where the defendant expressly waives his or her Apprendi/Blakely Sixth Amendment right, either by stipulating to the relevant facts or by consent to judicial fact-finding. But this question left open in Hall is not presented in Beito's case.

In Suleiman, we held that a defendant's stipulation to facts that support imposing an exceptional sentence would survive Blakely requirements only where the defendant stipulated specifically to the aggravating factor at issue and agreed the record supported the factor. State v. Suleiman, 158 Wn.2d 280, 292, 143 P.3d 795 (2006). Put otherwise, it is not enough to stipulate to facts from which the trial court could find additional facts, the existence of which would support finding the aggravating factor was present and provides support for imposing an exceptional sentence.

Here, like in Hall, the trial court engaged in fact-finding to support imposing

Beito's exceptional sentence. Under Suleiman, because Beito did not stipulate to the facts relied on by the trial court to support the exceptional sentence, Beito did not waive his Apprendi/Blakely Sixth Amendment right to have a jury find beyond a reasonable doubt that the aggravating factor supporting an exceptional sentence existed. Because Beito did not stipulate to such facts, the State's harmless error argument is not persuasive in light of Hall, so that issue remains an open question.

The State concedes that a Blakely error occurred, which recognizes that the trial court did engage in impermissible fact-finding, thereby violating Beito's Apprendi/Blakely rights. Here, at most, the stipulated facts establish Beito committed rape of a child in the third degree and that he was responsible for Jessica's murder. A review of the record shows Beito did not stipulate to the exceptional sentence or the fact that the rape was motive for and closely connected

to the murder. Under Apprendi, without such an admission by Beito, a jury and not the trial court should have determined whether aggravating factors that support an exceptional sentence (if any) existed. We hold that, without more, the trial court violated Beito's Apprendi/Blakely Sixth Amendment right to a jury trial. In so

holding, no harmless error analysis is available. As a practical matter, if we engaged in a harmless error analysis for this issue, we would usurp the role the United States Supreme Court has reserved for the jury in determining whether aggravating factors exist to support an exceptional sentence. In other words, in light of Blakely, there is nothing in this case for which harmless error analysis applies.

Finally, the State argues in favor of remanding the case for the trial court to impanel a jury to determine if the aggravating factors existed in Beito's case. But the applicable statutes and our cases do not support the State's position.

In Hall, we determined that under the exceptional sentencing provisions applicable to Hall (at the time of sentencing), no procedure existed whereby the jury could have been asked to determine whether aggravating circumstances were present. "The exceptional sentencing provisions in effect when Hall committed his offense directed that the trial court find aggravating circumstances by a preponderance of the evidence." Hall, 163 Wn.2d at 351-52 (emphasis added). This legislative directive precluded requiring proof beyond a reasonable doubt to be found by a jury. As such, it follows that this directive made it procedurally

impossible to obtain a constitutionally valid jury finding with respect to the existence of any aggravating factor. The applicable language at the time of Hall's case "'explicitly direct[ed] the trial court to make the necessary factual findings to support an exceptional sentence and d[id] not include any provision allowing a jury to make those determinations during trial, during a separate sentencing phase, or on remand.'" Hall, 163 Wn.2d at 352 (second emphasis added) (alterations in original) (internal quotation marks omitted) (quoting Womac, 160 Wn.2d at 662-63).

The same sentencing provisions applicable at the time of Hall's crime (1996) were the provisions applicable at the time of Beito's crime (1998). Because Beito, unlike Hall, did not waive his right to a jury with respect to determining sentencing factors,

the same analysis applies. That being the case, we must now determine how Beito's case should be resolved on remand and whether it is now procedurally possible to impanel a jury to consider whether an aggravating factor existed that would support imposing an exceptional sentence.

Since Beito's conviction, the Sentencing Reform Act of 1981 (SRA) has been amended twice. In response to Blakely, the legislature first amended the SRA by

adding a statute, former RCW 9.94A.537 (2005), which allows juries to decide whether aggravating factors existed, the Blakely-fix. Laws of 2005, ch. 68, § 4. But we have found this amendment does not apply to any cases decided before its

2005 enactment. State v. Pillatos, 159 Wn.2d 459, 150 P.3d 1130 (2007). In Pillatos, we held trial courts did not possess inherent authority to impanel juries on remand to cure a Blakely error. As a result, under Pillatos, the 2005 amendments do not apply here (Beito pleaded guilty in 2000). Because the 2005 amendments do not apply, without more, our holding in Pillatos requires the trial court to impose a standard range sentence on remand.

Following Pillatos, the legislature amended the SRA, former RCW 9.94A.537 (2005), to allow trial courts to impanel juries to decide aggravating factors in cases that had been previously decided. Laws of 2007, ch. 205, § 1.

Beito argues that, on remand, the trial court must impose a sentence within the standard range. He asserts that the 2007 amendment, enacting the current RCW 9.94A.537(2), does not apply to his case.4 As Beito correctly points out, although

4 Additionally, the State does not argue to the contrary.

the 2007 amendment permits the trial court to impanel a jury to determine the aggravating factors (if any) that might exist, the statute is not without its own express limits. RCW 9.94A.535 authorizes the impaneled jury to consider only the exclusive list of aggravating factors identified in subsection (3) "that were relied

upon by the superior court in imposing the previous sentence . . . ." RCW

9.94A.537(2); see also RCW 9.94A.535(3) ("[T]he following circumstances are an exclusive list of factors that can support a sentence above the standard range." (emphasis added)).

Here, the trial court imposed Beito's exceptional sentence based on its finding that the victim's rape was motive for and closely connected to her murder. The finding of "rape closely connected to and motive for murder" is not a factor in RCW 9.94A.535(3), nor is anything of that nature listed there. Significant here is that "deliberate cruelty" and victim "vulnerability" are aggravating factors listed in RCW 9.94A.535(3)(a) and (b), respectively. But the trial court specifically rejected deliberate cruelty and victim vulnerability as aggravating factors. Because the factor relied on by the trial court is not found in the statute's exclusive list, we hold that the 2007 amendments are not applicable in Beito's case.

CONCLUSION

We reverse and remand for resentencing within the standard range.

Cause No. 77973-2

In re Personal Restraint Petition of

Corey Beito

AUTHOR:

Justice Charles W. Johnson

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Susan Owens

Justice Barbara A. Madsen

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Justice Tom Chambers