

CRIMINAL PROCEDURE

Criminal Procedure: Judicial Vindictiveness

Wilson v. State,
845 So. 2d 142 (Fla. 2003)

Whenever a trial judge participates in a plea-agreement negotiation and subsequently imposes a harsher post-trial sentence than was offered to the defendant during those negotiations, a totality-of-the-circumstances test determines whether a presumption of vindictiveness arises from the judge's actions. The proper relief when the prosecution fails to rebut a presumption of judicial vindictiveness is a remand to a different trial judge for resentencing.

FACTS AND PROCEDURAL HISTORY

The Florida Supreme Court consolidated the two similar, yet conflicting, cases of *Byrd v. State*, 794 So. 2d 671 (Fla. 5th Dist. App. 2001), and *Wilson v. State*, 792 So. 2d 601 (Fla. 4th Dist. App. 2001) [hereinafter *Wilson I*]. In its consolidated opinion, the Court considered “whether due process principles compel us to adopt a presumption of vindictiveness that arises *whenever* the trial judge participates in the plea negotiations and the defendant subsequently receives a harsher sentence after a trial or hearing.” *Wilson*, 845 So. 2d 142, 150 (Fla. 2003) [hereinafter *Wilson II*] (emphasis in original).

In *Byrd*, the trial judge told the defendant that a plea offer of thirty years was “*a steal*” and that the defendant “*certainly won't get that low if he goes to trial.*” *Id.* at 145 (citing the trial record) (emphasis in original). The defendant rejected the offer, went to trial, and was found guilty. The trial judge then sentenced the defendant to seventy-five years in prison. The defendant appealed to the Fifth District Court of Appeal which found that a presumption of vindictiveness automatically arises whenever a subsequent sentence exceeds a plea offer in which the trial judge participated. The Fifth District Court found that, in *Byrd*, the State failed to rebut this presumption and that the increased sentence was therefore improper. The Court reversed the trial court's decision and remanded the case to the same court with instructions “to

sentence the defendant in accordance with its prior plea offer.” *Byrd*, 794 So. 2d at 673.

In the facts concerning the *Wilson* cases, minutes before the defendant’s final hearing for a probation violation, the trial judge offered the defendant a plea bargain of 128 months. The judge stated that this sentence was at the bottom of the sentencing guidelines and that he could not give the defendant a lesser sentence. When the defendant did not agree to the offer, the trial judge withdrew it and then told the defendant “*in my opinion you should have taken it.*” *Wilson II*, 845 So. 2d at 147 (citing the trial record) (emphasis in original). The judge then immediately moved the proceeding forward to a full probation hearing. The judge found that the defendant violated his probation, and sentenced him to 150 months in prison. The defendant appealed, claiming that the judge acted vindictively and that the defendant deserved a new sentencing before a different trial judge. The Fourth District Court found that a presumption of vindictiveness did not automatically arise when a court imposes a harsher sentence, and that such a presumption did not arise in this case. The court did find it necessary to remand the case for resentencing based on other procedural grounds, but allowed the same trial court to conduct the resentencing.

The Florida Supreme Court consolidated the two cases and found that a presumption of judicial vindictiveness does not automatically arise when a trial judge imposes a harsher sentence. The Court evaluated the facts of both cases and found that in each case the actions of the trial judge created a presumption of judicial vindictiveness. Thus, the Court reversed the district court holdings for both *Byrd* and *Wilson I*. Moreover, because the prosecution failed to rebut the presumption in both cases, the Court remanded each case for resentencing by a trial judge other than the judge who participated in the failed plea negotiations.

ANALYSIS

In *Wilson II*, the Florida Supreme Court evaluated *Byrd* and *Wilson I* in light of its prior rulings on the presumption of judicial vindictiveness. In *State v. Warner*, the Court attempted to maintain the advantages inherent in judicial participation in plea bargaining negotiations and “concluded that ‘the judge who participate[s] in the plea bargaining process *will not automatically* be

subject to recusal.” *Wilson II*, 845 So. 2d at 151 (citing *Warner*, 762 So. 2d 507, 514 (Fla. 2000)) (emphasis in original). The *Warner* Court did, however, impose safeguards or restrictions on judicial participation in plea bargaining. The Court required that judges not (1) initiate plea negotiations, or (2) “state [or] imply alternative sentencing possibilities” based upon “procedural choices, such as the exercise of a defendant’s right to trial.” *Warner*, 762 So. 2d. at 514. The Court also required that a judge must make a record of all plea negotiations in which he or she participates. *Id.* And finally, the Court acknowledged that when a trial judge does not state on the record his or her reasons for imposing a harsher sentence, this omission “raise[s] concerns” regarding judicial neutrality and vindictiveness. *Wilson II*, 845 So. 2d at 152. According to the Court in *Wilson II*, the *Warner* decision “never intended to create a constitutional right to the sentence offered” in plea bargaining “or to give the defendant an expectancy that the sentence would be no higher if the defended decided not to plead guilty.” *Id.* Instead, the *Warner* decision attempted to permit a trial judge to communicate directly and neutrally with a defendant who asked “what do you think the sentence would be if [I] pled guilty, as charged?” 762 So. 2d. at 514. Therefore, the Florida Supreme Court in *Wilson II* disagreed with the Fifth and Fourth District Courts’ interpretation of *Warner*. The Court further built on *Warner* when it set forth specific standards to determine when a presumption of judicial vindictiveness arises.

In *Wilson II*, the Court proscribed a totality of the circumstances test and a non-exclusive list of factors that must be considered on a case-by-case basis before judicial vindictiveness will be presumed. Those factors include:

- (1) whether the trial judge initiated the plea discussions with the defendant . . . ;
- (2) whether the trial judge . . . appears to have departed from his or her role as an impartial arbiter . . . ;
- (3) the disparity between the plea offer and the ultimate sentence imposed; and
- (4) the lack of any facts on the record that explain the reason for the increased sentence other than that the defendant exercised his or her right to a trial or hearing.

Wilson II, 845 So. 2d at 156. The Court noted that the first two factors alone might invoke the presumption of judicial vindictiveness and shift the burden to the State to affirmatively dispel the presumption.

The Court first applied the totality-of-the-circumstances test to *Byrd* and found that the trial judge erred both by urging the defendant to accept the thirty years offered before trial and by implying that the defendant's choice in whether to proceed to trial would affect the sentence imposed. Further, the Court found that the large sentencing disparity (i.e. seventy-five years as opposed to thirty) created the "presumption of judicial vindictiveness that the State failed to rebut[,]” especially when the record was silent as to the reason for the increased sentence. *Id.* at 158. The Court further reversed the Fifth District Court when it quashed the order directing the same trial judge to resentence the defendant to the thirty years originally offered before trial. According to the Florida Supreme Court, *Warner* established that the defendant had no right or expectancy to the sentence offered in plea negotiations once he chose to plead not guilty. Thus, the appropriate remedy was to remand the case for resentencing before a neutral trial judge who did not participate in the plea negotiations.

The Court next applied the totality of the circumstances test to *Wilson I* and determined that the trial judge “may have . . . departed from the role [of] a neutral arbiter” when he told the defendant that, in the judge's opinion, the defendant should have taken the court's offer. *Id.* The trial judge further exacerbated the presumption of judicial vindictiveness when he immediately revoked the 128-month plea offer, moved forward with the probation hearing, and sentenced the defendant to 150 months without explaining the difference. Because this presumption went un rebutted in the record, the Court quashed the Fourth District Court's holding that no presumption of vindictiveness existed. Therefore, just as it did in *Byrd*, the Court remanded *Wilson I* for resentencing before a different trial judge.

SIGNIFICANCE

In its *Wilson II* consolidated opinion, the Florida Supreme Court sought not only to correct the due process violations of *Byrd* and *Wilson I*, it also provided guidance to courts and counsel alike in balancing the tension between the leniency that the justice sys-

tem affords to those who plead guilty and the inherent inequity of penalizing a defendant for exercising his or her constitutional right to a jury trial.

This case reminds trial judges that they have the duty to safeguard this balance and must remain neutral within plea agreement negotiations. When a presumption of judicial vindictiveness is created, the prosecution must affirmatively rebut it on the record. Moreover, the trial judge must take pains to include within the record a valid basis for the post-conviction sentence and to account for the increase in that sentence. When trial judges and prosecutors fail to carry these burdens, defendants have the right to resentencing by a different trial judge.

RESEARCH REFERENCES

- 14B Fla. Jur. 2d *Criminal Law* § 1610 (2004)
- 15 Fla. Jur. 2d *Criminal Law* § 2227 (2001 & Supp. 2004).
- *Hornbuckle v. State*, 864 So. 2d 1203 (Fla. 5th Dist. App. 2004).

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