

CRIMINAL PROCEDURE

Criminal Procedure: Sentencing

Montgomery v. State,
897 So. 2d 1282 (Fla. 2005)

When calculating a defendant's sentence for a current conviction, the defendant's previous plea of nolo contendere, followed by withheld adjudication, is considered a prior conviction.

FACTS AND PROCEDURAL HISTORY

Sheldon Montgomery was convicted of resisting arrest and ticket scalping and was sentenced to sixteen months' imprisonment. Prior to this conviction, Montgomery had pled nolo contendere (no contest) to charges for carrying a concealed firearm, aggravated battery, and two counts of cocaine possession. The trial court had withheld adjudication on those charges. In determining the current sentence, the trial court scored Montgomery's previously withheld adjudications as prior convictions on the criminal punishment scoresheet. Montgomery appealed, arguing that a no contest plea followed by withheld adjudication should not be considered a prior conviction for sentencing purposes. The Fourth District Court of Appeal upheld the trial court's decision and certified conflict to the Florida Supreme Court. The Florida Supreme Court accepted jurisdiction based upon direct conflict between the Fourth District's decision and decisions from the First, Second, and Fifth District Courts of Appeal. The Court affirmed the Fourth District's decision, thereby rejecting the decisions in *Batchelor v. State*, 729 So. 2d 956 (Fla. 1st Dist. App. 1999), *State v. Freeman*, 775 So. 2d 344 (Fla. 2d Dist. App. 2000), and *Negron v. State*, 799 So. 2d 1126 (Fla. 5th Dist. App. 2001).

ANALYSIS

Florida's sentencing guidelines require the trial court to prepare a guideline scoresheet to determine a defendant's sentence. The sentencing guidelines scoresheet assigns points based on the nature of the defendant's current offenses, as well as any prior criminal record. The trial court considers these points to compute the recommended sentence. Florida Statutes Section 921.0014

specifically requires the State Attorney's office to score all of a defendant's prior convictions on this sentencing scoresheet. Section 921.0021(2) defines a conviction as "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld." In this case, the Florida Supreme Court considered whether a no contest plea, followed by withheld adjudication, constituted a "determination of guilt" that should be scored as a prior conviction on the sentencing worksheet.

Despite contrary rulings in *Batchelor*, *Freeman*, and *Negron*, the Florida Supreme Court held that a no contest plea followed by withheld adjudication is considered a prior conviction for purposes of the sentencing guidelines. The Court considered first the plain meaning of the statutory language to conclude that the word "conviction" was clearly intended to encompass all determinations of guilt, even when the trial court has withheld adjudication. Because the Florida Legislature failed to distinguish between no contest pleas and guilty pleas in the statute, the Court reasoned that the "logical inference" was that the Legislature intended a no contest plea followed by withheld adjudication to be deemed a conviction for sentencing purposes.

The Court supported its decision by referring to its discussion of the issue in the 1917 case of *Pensacola Lodge No. 497 v. State*, 77 So. 613 (Fla. 1917). In that opinion the Court explained that a no contest plea does not require a formal adjudication of guilt because the determination of guilt "follows as a legal inference from the implied confession in the plea." *Pensacola Lodge*, 77 So. at 614. Montgomery argued that in *Garron v. State*, the Court held differently, ruling that a no contest plea followed by a withheld adjudication was not a conviction for purposes of determining aggravating circumstances in capital sentencing. *Montgomery*, 897 So. 2d at 1285 (citing *Garron v. State*, 528 So. 2d 353, 360 (Fla. 1988)). The Court pointed out that eleven years after *Garron*, the Legislature clarified its position when it enacted the current sentencing statute that expressly includes convictions "whether or not adjudication [was] withheld." *Id.* at 1285 (quoting Fla. Stat. § 921.0021(2)).

Three justices joined in a dissenting opinion that asserted a different "plain meaning" of the statute. The dissent pointed out that although the statutory definition of conviction did not require a formal adjudication of guilt, the statute clearly demands

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“a determination of guilt,” either by plea or by trial. Relying on *Garron* for the proposition that a no contest plea alone does not establish guilt, the dissent adopted the position that a no contest plea without adjudication cannot be considered “a determination of guilt” to satisfy the statute. The dissent reasoned that the Legislature purposely left any reference to no contest pleas out of the sentencing statute because it intended for the term “conviction” to include only guilty pleas, guilty verdicts at trial, and no contest pleas followed by adjudications of guilt by the court.

SIGNIFICANCE

This case resolved a conflict among several Florida District Courts of Appeal concerning the correct interpretation of the term “conviction” as used in Florida’s sentencing guidelines, holding that the definition of “conviction” in the sentencing statute should be interpreted broadly to include a plea of no contest even in the absence of a formal adjudication of guilt. The State Attorney’s office is now required to score such a no contest plea as a prior conviction on the defendant’s sentencing guideline scoresheet, thereby raising both the defendant’s score and his or her recommended sentence. Defense attorneys should therefore advise their clients that a no contest plea will have the same effect on their sentence as a guilty plea if they are convicted of any crimes in the future. If the Legislature did not intend for a no contest plea followed by withheld adjudication to be treated as a prior conviction for sentencing purposes, then the Legislature will have to amend the sentencing statute.

RESEARCH REFERENCE

- 15 Fla. Jur. 2d *Criminal Law* §§ 2256, 2275 (2001 & Supp. 2005).

Paula P. Bentley