

173 Conn. App. 625

JUNE, 2017

625

State v. Heath

of this case, we conclude that it would be unfair to the defendant to decide this issue by holding that the defendant failed to meet a burden of proof on a claim he never made. Because the record is inadequate, we also decline to hold that count one necessarily *is not* a class A felony.

The judgment is reversed and the case is remanded with direction to reinstate the defendant's original sentence and to deny his motion to correct an illegal sentence.

In this opinion the other judges concurred.

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STATE OF CONNECTICUT *v.* JAMAR HEATH

(AC 38027)

(AC 38231)

Keller, Mullins and Beach, Js.

*Syllabus*

The state appealed, and the defendant cross appealed, to this court from the judgment of the trial court granting, in part, the motion to correct an illegal sentence filed by the defendant, who previously had been convicted, on a guilty plea, of the crimes of sexual assault in the first degree and assault in the first degree, two class B felonies, and had been sentenced to a total effective sentence of twenty-five years of incarceration, execution suspended after fifteen years, with ten years of probation. In his motion to correct, the defendant had claimed that his sentence for sexual assault in the first degree was illegal because it included a period of probation, rather than a period of special parole. On appeal, the state claimed that the trial court, in granting the defendant's motion to correct an illegal sentence, improperly concluded that it was required, pursuant to statute ([Rev. to 2007] § 53a-70 [b] [3]), to resentence the defendant to a period of special parole for his conviction of sexual assault in the first degree. After these appeals were filed, our Supreme Court determined in *State v. Victor O.* (320 Conn. 239), and *State v. Jason B.* (320 Conn. 259), that a period of special parole is not a required sentence component in cases, such as the present one, involving class B felony sexual assault in the first degree. The defendant nonetheless claimed that because the Supreme Court's determination in those cases amounted to a change in the law and he had relied on the law as it existed at the time he filed his motion, this court should

NOTE: These pages (173 Conn. App. 625 and 626) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 6 June 2017.

626

JUNE, 2017

173 Conn. App. 625

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*State v. Heath*

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not give retroactive effect to those two decisions. *Held* that the defendant's claim that this court should not give retroactive effect to the two Supreme Court decisions decided during the pendency of this appeal was unavailing, as this case was controlled by this court's decision in the companion case of *State v. Ruiz* (173 Conn. App. 608), in which this court fully addressed the retroactive applicability of *Victor O.* and *Jason B.* under similar arguments and rejected the claims that those cases amounted to a change in the law.

Argued February 23—officially released June 6, 2017

*Procedural History*

Substitute information charging the defendant with one count each of the crimes of sexual assault in the first degree, kidnapping in the first degree, strangulation in the first degree, assault in the first degree, and assault in the second degree, brought to the Superior Court in the judicial district of New Haven, where the defendant was presented to the court, *Damiani, J.*, on a plea of guilty to the charges of sexual assault in the first degree and assault in the first degree; thereafter, the state entered a nolle prosequi as to the remaining charges; judgment in accordance with the plea; subsequently, the court, *Clifford, J.*, granted in part the defendant's motion to correct an illegal sentence, and the state and the defendant appealed to this court. *Reversed; judgment directed.*

*Laurie N. Feldman*, special deputy assistant state's attorney, with whom, on the brief, were *Patrick Griffin*, state's attorney, *Michael Dearington*, former state's attorney, and *Lisa D'Angelo*, assistant state's attorney, for the appellant-appellee (state).

*Stephan E. Seeger*, with whom, on the brief, was *Igor G. Kuperman*, for the appellee-appellant (defendant).

*Opinion*

MULLINS, J. The state appeals and the defendant, Jamar Heath, cross appeals from the judgment of the trial court granting in part the defendant's motion to