Prosecuting Attorneys' Council of Georgia

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MAY 1, 2017

State v. Riggs

Supreme Court holds that O.C.G.A. §§ 17-10-1(a)(2) and 17-10-10(a) permits "hybrid" sentences in which a trial court may run a split sentence partially consecutive and partially concurrent to another sentence, such that the probationary component of a split sentence may be served concurrently with a period of confinement imposed by the sentence on another count

In *State v. Riggs*, S16G1166 (5-1-17), Riggs entered into a non-negotiated guilty plea to multiple charges, including several sexual offenses. He was sentenced to a total sentence of 50 years with 30 to serve. He filed a motion to reduce his sentence, arguing that the trial court violated O.C.G.A. § 17-10-6.2(b) by failing to impose split sentences on each of his child molestation convictions and on his statutory rape conviction. The trial court denied the motion, but in an unpublished opinion, the Court of Appeals reversed, finding that the sentences were void. The Supreme Court granted the State's petition for writ of certiorari to consider the meaning of the split-sentence requirement under O.C.G.A. § 17-10-6.2(b).

The State first argued that the plain reading of O.C.G.A. § 17-10-6.2(b) shows that the split-sentence requirement applies only to the overall sentence, not each conviction for a sexual offense. The Court disagreed, finding that there is no statutory language that even hints at the State's proposed aggregate approach. Instead, the Court found, the only reasonable construction is that the split-sentence requirement applies to each sexual offense.

Nevertheless, the State argued, O.C.G.A. § 17-10-6.2(b) does not apply to each sexual offense, but only to the "final offense," which the Court interpreted as the last conviction for which the trial court imposes a sentence. But, the Court again disagreed because the argument ignores the general requirement that the trial court impose a discrete sentence for each offense and because subsection (b) contains no reference to "final offense," or any language permitting the trial court to ignore the provision's dictates for some of the sentences when a defendant has been convicted of multiple sexual offenses.

Finally, the State argued that applying the split-sentence requirement to each sexual offense would lead to absurd results because multiple consecutive split sentences could be executed only by releasing a defendant from incarceration to serve the probationary part of the split sentence before returning the defendant to prison to serve the next term of imprisonment on another sexual offense. Yet, again, the Court disagreed.

First, the Court found, O.C.G.A. § 17-10-10(a) creates a presumption that sentences will run concurrently, but empowers a trial court to "otherwise expressly provide[]." Nothing in the statute limits this authority by prohibiting a trial court from running one sentence partially concurrent and partially consecutive to another — a "hybrid" sentence. Thus, the Court concluded, in harmonizing the relevant sentencing provisions, including the split-sen-

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tence requirement under O.C.G.A. § 17-10-6.2(b), the discretion trial courts have at sentencing includes the authority to run a split sentence partially consecutive and partially concurrent to another sentence, such that the probationary component of a split sentence may be served concurrently with a period of confinement imposed by the sentence on another count. Therefore, the Court found, its "construction of O.C.G.A. § 17-10-6.2(b) does not result in the absurdity the State fears" Accordingly, the Court affirmed the judgment of the Court of Appeals.

In addition to *Riggs*, in which the Supreme Court has found that "hybrid" sentencing is permissible under § 17-10-6.2(b), our Legislature provided a "fix" to this split sentencing issue in this year's legislative session. House Bill 341, Section 5, amends O.C.G.A. § 17-10-6.2(b), in pertinent part, as follows: "*Any* such sentence shall include, in addition to the mandatory *term of* imprisonment, an additional probated sentence of at least one year; *provided, however, that when a court imposes consecutive sentences for sexual offenses, the requirement that the court impose a probated sentence of at least one year shall only apply to the final consecutive sentence imposed*." (language in italics added to statute).

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