

Summary of SC94745, *State of Missouri v. Jerri Smiley*

Appeal from the Greene County circuit court, Judge Calvin R. Holden

Argued and submitted October 21, 2015; opinion issued January 26, 2016

Attorneys: The state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321, and J. Daniel Patterson and Stephanie L. Wan of the Greene County prosecutor's office in Springfield, (417) 868-4061. Smiley was represented by James Egan of the public defender's office in Springfield, (417) 895-6740.

A number of organizations and individuals filed a brief as friends of the Court. They were represented by Marsha L. Levick of the Juvenile Law Center in Philadelphia, (215) 625-0551, and Mae C. Quinn of the Juvenile Law and Justice Clinic at Washington University School of Law in St. Louis, (314) 935-6088.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals the circuit court's finding – before it conducted the trial of a juvenile charged with assault and armed criminal action – that a mandatory sentencing provision in the armed criminal action statute is unconstitutional as applied to juveniles. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri dismisses the appeal. There is no statutory authority for the state to appeal such a decision, and there is no reason for this Court to treat the appeal as a writ petition because the circuit court has done nothing a writ of prohibition should restrain nor refused to do anything a writ of mandamus should compel. The circuit court's determination remains advisory until and unless the juvenile pleads guilty or is found guilty of the charge and the circuit court is called upon to sentence her.

Facts: Police arrested 16-year-old Jerri Smiley in June 2013 for allegedly stabbing another young woman. After an initial delinquency petition was dismissed so Smiley could be prosecuted as an adult, the state charged her with first-degree assault and armed criminal action. Less than a week before her trial, Smiley moved to dismiss the armed criminal action charge on the ground that applying the three-year mandatory minimum sentencing provision of section 571.015.1, RSMo, to juvenile offenders violates the state and federal constitutions. Without Smiley pleading guilty to or being found guilty of the charge, the circuit court determined that prohibiting mandatory incarceration is a logical extension of the United States Supreme Court decision in *Miller v. Alabama* and, therefore, it found section 571.015.1 was unconstitutional as applied to all juvenile offenders. It then severed the mandatory sentencing provision of the statute. The state appeals.

APPEAL DISMISSED.

Court en banc holds: (1) The state has no statutory authority to bring this appeal. The state concedes that the trial court's decision regarding the constitutional validity of the mandatory sentencing provision is not among the circumstances listed in the statutes authorizing the state to appeal in a criminal case. Although the circuit court named its determination a "judgment," it is not a final judgment – in a criminal case, a judgment is not final until a charge is dismissed before trial or sentence is entered. Neither was the charge "effectively" dismissed. Smiley still faces trial and possible conviction on the armed criminal action charge.

(2) The Court declines Smiley's request to treat the state's appeal as a writ petition. The circuit court has not yet done anything that a writ of probation should restrain or refused to do anything a writ of mandamus should compel. The circuit court's determination about the possible application of the sentencing provision of section 571.015.1 to Smiley was and remains interlocutory and advisory unless and until Smiley pleads guilty or is found guilty of the armed criminal action charge and the court then is called upon to sentence her. At that point, her case would be subject to appellate review.