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Supreme Court affirms habitual offender enhancement on defendant for probation violation

SANTA FE – The state Supreme Court ruled today that defendants must be “reasonably informed” when a plea agreement for multiple offenses could result in additional prison time if they violate probation at any point throughout their probationary period.

In a split decision, the Court’s majority affirmed a district judge’s decision to lengthen the sentence of Christina Banghart-Portillo because of probation violations after her release from prison in 2016. She was a little over halfway through a three-year probationary period.

The Court’s majority rejected arguments that constitutional protections against double jeopardy had been violated by an additional habitual offender enhancement of Banghart-Portillo’s sentence for tampering with evidence – count 1 of the two criminal offenses to which she pleaded no contest. New Mexico’s habitual offender law adds time to the sentences of felony defendants with previous felony convictions.

Banghart-Portillo contended that she had a “reasonable expectation of finality” of her sentence after finishing her prison term and serving more than 18 months of probation. She argued that the district court lost jurisdiction to enhance her sentence after it was completed.

The Supreme Court’s majority found that the district court had structured the defendant’s probation as a cumulative amount of time for her two felony convictions rather than individual back-to-back segments of 18 months of probation for each conviction.

In an opinion by Chief Justice C. Shannon Bacon, the Court’s majority wrote the defendant’s written plea agreement “was silent about the possibility of enhancement of either count if she violated probation.” But the majority concluded that the district court at the defendant’s sentencing hearing had “resolved any ambiguities present in the plea agreement by informing Defendant of the potential consequences if she violated probation.”

Joining in the majority opinion were Justice Julie J. Vargas and Second Judicial District Court Judge Cindy Leos, who was designated to participate in the case.

In a dissenting opinion, Justice David K. Thomson wrote that “allowing the district court to enhance Defendant’s sentence on Count 1 violates concepts of double jeopardy.” Justice Briana H. Zamora joined in the dissent.

Banghart-Portillo pleaded no contest to two felonies – evidence tampering and conspiracy to commit evidence tampering. She and Anthony Banghart were arrested in 2014 because they had outstanding warrants. After being booked, a dispatcher saw Banghart-Portillo attempt to swallow a plastic bag of heroin handed to her by the man.

Banghart-Portillo admitted at a sentencing hearing to having two prior felony convictions, which under the habitual offender law could add four years of prison for each of the offenses to which she pleaded no contest. Prosecutors agreed to seek enhancement for only one prior felony – adding one year to each of her sentences – and to hold the other prior felony in abeyance for purposes of a sentencing enhancement. Her sentence was suspended except for the two-year habitual offender enhancement. The three years of probation followed her incarceration.

At the hearing, the district court “specifically informed Defendant that if she admitted to both prior felonies, a probation violation would result in a four-year habitual offender enhancement on each of her counts, totaling eight additional years of incarceration,” the Supreme Court’s majority wrote. “This clarification occurred on more than one occasion.”

Based on that clarification, the majority stated, Banghart-Portillo should have reasonably expected that each of the felonies in her plea agreement “was subject to a habitual offender enhancement throughout her entire probationary period. As a result, Defendant has failed to prove that she had a reasonable expectation of finality as to Count 1.”

Both the majority and dissenting opinions emphasized the importance and need for clarity in plea agreements.

“We note that the result in this case may very well have been different if the district court had not made it clear that Defendant faced up to eight additional years of incarceration if she violated probation,” the majority wrote. “We caution the sentencing court and counsel for the parties to ensure that it is clear to a defendant accepting a plea whether probation is to be served in a unitary block. This will provide the defendant notice that a habitual offender enhancement may apply to all counts for the duration of the probationary period if a violation occurs. We further clarify that there can be no presumption that a probationary term will be served in the aggregate absent explicit language in the plea agreement or clarification by the district court.”

Justice Thomson wrote in the dissenting opinion: “I appreciate the considered guidance the majority provides regarding how a defendant could be better informed about the structure, term, and finality of a sentence when faced with the facts of this case.”

After multiple probation violations by Banghart-Portillo, the district court revoked her probation and imposed six years of habitual offender time on her sentence – three years for each

conviction. She challenged the additional prison time and the state Court of Appeals affirmed the district court. The defendant then asked the Supreme Court to review her case.

In the dissenting opinion, Justice Thomson wrote: “I am not convinced that it is lawful to extend a district court’s jurisdiction by applying the aggregate three-year term of probation to each count in this case when the sentence provides that each count shall run consecutively and that each count be enhanced separately. Put simply, whereas here there is no part of the sentence for count one to be served, there is no part of a defendant’s sentence to be enhanced.”

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To read the decision in *State v. Banghart-Portillo*, No. S-1-SC-37389, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521368/index.do>