



1994

Recent Developments: Jones v. State: It Is within the Trial Judge's Discretion to Determine Which Crime of Violence Constitutes the Third Conviction for the Purpose of Imposing an Enhanced Sentence under Article 27, § 643B(C)

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Recommended Citation

Vogts, Dana G. (1994) "Recent Developments: Jones v. State: It Is within the Trial Judge's Discretion to Determine Which Crime of Violence Constitutes the Third Conviction for the Purpose of Imposing an Enhanced Sentence under Article 27, § 643B(C),"

University of Baltimore Law Forum: Vol. 25 : No. 2 , Article 16.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol25/iss2/16>

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Jones v. State:

**IT IS WITHIN
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ARTICLE 27, §
643B(C).**

In *Jones v. State*, 336 Md. 255, 647 A.2d 1204 (1994), the Court of Appeals of Maryland held that it is within the sound discretion of the sentencing judge to select which of a defendant's convictions will serve as the third crime of violence for the purpose of imposing a mandatory enhanced sentence under article 27, section 643B(c) of the Annotated Code of Maryland. In so ruling, the court concluded that a defendant is not entitled to have a section 643B(c) penalty imposed upon the conviction that will result in the mildest aggregate sentence.

In the Circuit Court for Baltimore County, a jury convicted Duane Thomas Jones of second degree rape, second degree sexual offense, and robbery. All three convictions arose from the same incident which occurred on March 15, 1991. Jones had previously served a term in a correctional institution following convictions for two separate crimes of violence. Under article 27, section 643B(c) of the Annotated Code of Maryland, a person who has been convicted of two crimes of violence arising from separate incidents and has served a term in a correctional institution as a result of a conviction of a crime of violence shall be sentenced to imprisonment for at least twenty-five years upon being convicted of a third crime of violence. For the purpose of imposing the section 643B(c) penalty upon Jones, the trial judge selected the robbery conviction

as the third offense. Jones did not contest that he satisfied the requirements for a section 643B(c) penalty. However, Jones did contend that section 643B(c) is ambiguous, and therefore, pursuant to the rule of lenity, must be construed so as to require that the section 643B(c) penalty be imposed on the conviction that would result in the mildest sentence.

Without the section 643B(c) penalty, the maximum sentence Jones would have received is fifty years-- ten years for robbery, and twenty years each for second degree rape and second degree sexual offense, the terms to run consecutively. Pursuant to section 643B(c) the trial judge imposed the penalty upon the robbery conviction, and Jones' maximum sentence was sixty-five years. In contrast, had the second degree rape or second degree sexual offense served as the third conviction, the maximum sentence to which Jones would have been exposed was fifty-five years. The trial court rejected Jones' contention that the robbery conviction should not serve as the third crime of violence and Jones appealed. In an unreported opinion, the Court of Special Appeals of Maryland upheld the sentence imposed by the trial court. The court of special appeals held that selecting the crime of violence upon which to impose the section 643B(c) penalty is within the discretion of the trial judge. The Court of Appeals of Maryland granted certiorari to consider Jones' con-

tentions.

In reaching its decision, the court of appeals looked at the plain meaning of section 643B(c) and considered the legislative intent behind its enactment. The court began its analysis by noting that if statutory language is ambiguous, the rule of lenity requires the court to construe the statute in favor of the defendant. In rejecting Jones' contention that section 643B(c) is ambiguous, the court of appeals determined that because the language of section 643B(c) is clear, the rule of lenity is not applicable and the statute should be applied as written. *Jones* at 261, 647 A.2d at 1208. The court reasoned that the plain language of section 643B(c) provides that a third conviction of a crime of violence mandates imprisonment for no less than twenty-five years. Because Jones' robbery conviction qualified as a third conviction for a crime of violence, the judge had authority under section 643B(c) to impose the mandatory penalty upon that conviction. *Id.* at 263, 647 A.2d 1208.

The court further explained that to apply a lesser sentence when Jones had committed the second degree rape and second degree sexual offense, yet impose a greater sentence had he not, would be inconsistent with the purpose of the statute. *Id.* According to the court, the Legislature's intent in promulgating statutes such as section 643B(c) was to protect society by imposing enhanced

sentences upon recidivist criminals who fail to refrain from criminal activity despite previous convictions and imprisonment. *Id.* at 264, 647 A.2d at 1208. The court explained that the statute is devoid of any language that suggests a legislative intent to prevent judges from selecting the conviction with the least severe penalty, thereby imposing the longest sentence. The court reasoned that the legislature intended that the sentencing judge have discretion, based upon the nature of the convictions and the criminal history of the defendant, to decide which crime would best serve as the third conviction. *Id.* at 264-65, 647 A.2d at 1209. The court further supported its holding by emphasizing the broad discretion that Maryland grants, in general, to trial court judges in sentencing criminal defendants. *Id.* at 265, 647 A.2d at 1209.

In his dissenting opinion, Judge Bell, with whom Judge Eldridge joined, rejected the majority's construction of section 643B(c). The dissent maintained that the language of section 643B(c) is ambiguous and the legislative intent unclear and, therefore, the statute should be construed according to the rule of lenity. *Id.* at 266, 647 A.2d at 1209. Reviewing the language of section 643B(c), the dissent reasoned that had the legislature intended for a judge to have such broad discretion in determining the offense to serve as the third crime of violence, it could easily have provided so more clearly in the

statute. *Id.* at 272, 647 A.2d at 1212. Rejecting the majority's reasoning that its holding is firmly based in the plain meaning of the statute, the dissent maintained that section 643B(c) fails to address the situation in which there is more than one crime that could serve as the third conviction. *Id.* at 269, 647 A.2d at 1212. The dissent asserted that section 643B(c) does not indicate whether the enhanced sentence should be applied to the conviction with the greatest maximum sentence or to the one with the most lenient sentence.

In *Jones v. State*, the Court of Appeals of Maryland held that it is within the discretion of the sentencing judge to select which one of a defendant's convictions arising from a single incident will serve as the third crime of violence for the purpose of section 643B(c). By rejecting the argument that a defendant is entitled to have a section 643B(c) penalty imposed upon the conviction that will result in the least severe sentence, the court construed section 643B(c) against recidivist criminals. While the opinion is limited in that imposition of the enhanced sentence remains within the discretion of the trial judge, the *Jones* decision represents the court's increasing concern in protecting society by sentencing those who refuse to refrain from criminal activity to longer terms of imprisonment.

- Dana G. Vogts