

Supreme Court tosses conviction in casino case

By: MO Lawyers Media Staff ⌚ January 16, 2008

A divided Missouri Supreme Court has tossed out a man's conviction for violating a Missouri gambling law, saying his conduct did not fall under the law he was charged with breaking.

Eric Winfrey admitted while pleading guilty to buying \$180 worth of casino chips in July 2004 at the Ameristar casino in St. Charles, then cashing them in at another window, where his girlfriend worked, and getting \$595 in cash. He pleaded guilty in 2005 to attempting to commit a prohibited act on a gambling boat. He also admitted that he intended to defraud the casino.

On appeal, Winfrey argued that the law to which he pleaded guilty does not actually cover his conduct, so his conviction should be tossed out. In a 4-3 ruling written by Judge Richard Teitelman, the Supreme Court held that the law in question requires taking something from a gambling game, or receiving more money than was won while gambling. In this case, it said, Winfrey never actually gambled, so his conduct, while it may be criminal, does not fall under this statute.

The court threw out the conviction Tuesday and sent the case back to the trial court.

The crime of attempting to commit a prohibited act on a gambling boat is a felony offense and, along with Winfrey's prior criminal history and plea to a tampering charge in this case, resulted in a 12-year sentence.

The wording of the law in question makes it a felony if a person "claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won."

The court majority said the language makes clear that the act must be directly tied to a casino game, or inflating gambling winnings.

"Although the statute does not require that one actually wager on a gambling game or otherwise directly participate in a gambling game, it does not follow that the statute covers conduct that has no connection to any actual gambling game," the court said. "The statute does not provide that a felony is committed if one takes money or something of value from a casino.

"The circuit court clearly erred in accepting Winfrey's plea to a crime that he did not commit."

The dissent, written by Judge Mary Rhodes Russell, said casino chips are closely linked to gambling because they have no other purpose or value, and as such Winfrey's conduct was covered by the law and his conviction should be upheld.

"Defendant's conduct fits exactly within the statute's language," Russell said in her dissent. "Although the majority posits that the statute covers only conduct with a direct connection to actual gambling, casino chips are directly connected to gambling as their sole purpose is for use in gambling games."

Jessica Hathaway, the public defender representing Winfrey, said she was pleased with the outcome but hadn't discussed it yet with her client. Hathaway also said this was the first case she has handled under this section of law and said some other public defenders in her St. Louis office also had never dealt with it before.

With the court's order, it's up to prosecutors whether to refile some other charge against Winfrey, but for now it should mean a five-year reduction in his sentence, she said.

The attorney general's office, which argued to uphold the conviction, could not be immediately reached for comment Tuesday.

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