



## The People v. Dejon Christopher Crump

2011 | Cited 0 times | California Court of Appeal | March 25, 2011

### NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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### OPINION

Affirmed.

Defendant and appellant Dejon Christopher Crump contends the granting of a motion to consolidate<sup>2</sup> created structural error by depriving him of his right to retained counsel. We affirm.

### BACKGROUND

A jury convicted defendant of forcibly raping (Pen. Code,<sup>3</sup> § 261, subd. (a)(2); count 1) and forcibly orally copulating (former § 288a, subd. (c)(2); count 2) Jane Doe 1 on October 24, 2004. The jury also convicted defendant of committing lewd and lascivious act upon Jane Doe 2, a child under the age of 14 years (§ 288, subd. (a); count 3) on September 6, 2004, and committing two acts of felony unlawful sexual intercourse with Jane Doe 2, a minor more than three years younger than defendant (§ 261.5, subd. (c); counts 4 & 5) on September 4, 2005. The jury found that during counts 1 or 2, and 3, defendant committed an offense against more than one victim (former § 667.61, subd. (e)(5) [subsequently renumbered to (e)(4)]), and during the commission of counts 4 and 5, defendant had been released from custody pending a felony trial (§ 12022.1). The trial court imposed a total sentence of eight years plus 30 years to life.

Counts 3, 4, and 5, were originally filed separately from counts 1 and 2. On April 2, 2008, a hearing was held on the People's motion to consolidate. Defendant's retained counsel objected to consolidation because "the two cases are factually different. The first case is [an] allegation of a forcible sexual contact from my client. The second case is a consensual, under the age of majority. I think, factually, they're separate. The one case is set for trial. The second case is here for Information Arraignment that we've continued for quite a while. I was retained on the first case through preliminary hearing and for trial. I have not been retained on the second case."

The trial court granted the motion "for a couple of reasons. First of all, they are of the same class of



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crime, and they are clearly cross-admissible under [Evidence Code section] 1108, and I don't see any prejudice to the defendant because of those circumstances. And it would save considerable time as opposed to two trials. There are lots of appropriate reasons to consolidate the case."

In response to the trial court's inquiry, defendant stated he might be able to get the money to have his retained counsel represent him on both cases. The trial court then continued the matter to give defendant an opportunity to "get the money together and to meet [retained counsel's] concerns," in which case the trial court would continue retained counsel as defendant's attorney. "Otherwise, you're not going to go without a lawyer, I can assure you of that. I'll appoint the public defender to represent you on both cases and go from there."

On April 7, 2008, retained counsel asked to be relieved as counsel of record; defendant lacked funds for a defense and the trial court appointed counsel to represent him. Thus, defendant was represented at trial by appointed counsel, and not by his retained counsel.

### DISCUSSION

"An accusatory pleading may charge two or more different offenses connected together in their commission, or two or more different offenses of the same class of crimes. (§ 954.) Offenses falling within this description, but charged in separate pleadings, may be consolidated for trial in order to promote judicial efficiency [citation], and a trial court's rulings on joinder are reviewed for abuse of discretion [citation]." (People v. Koontz (2002) 27 Cal.4th 1041, 1074.) Given this record, and the trial court's stated reasons for consolidating the two cases, defendant cannot show that the trial court abused its discretion. (See Alcala v. Superior Court (2008) 43 Cal.4th 1205, 1220 ["because consolidation or joinder of charged offenses ordinarily promotes efficiency, that is the course of action preferred by the law"].) However, a decision on joinder that was correct at the time it was made must still be reviewed to determine if, in the end, the joinder "'resulted in gross unfairness depriving the defendant of due process of law. [Citations.]" (People v. Soper (2009) 45 Cal.4th 759, 783.) Accordingly, defendant contends consolidation created structural error by depriving him of his right to retained counsel. The People contend that defendant's right to retained counsel of choice was properly outweighed by competing interests. We agree with the People.

"A criminal defendant has a qualified right to retain counsel of his choice." (People v. Ramirez (2006) 39 Cal.4th 398, 422.) However, the right does not apply to those "who require counsel to be appointed for them" and a trial court has a "wide latitude in balancing the right to counsel of choice against . . . the demands of its calendar." (United States v. Gonzalez-Lopez (2006) 548 U.S. 140, 151-152.) "Thus, a trial court may 'make scheduling and other decisions that effectively exclude a defendant's first choice of counsel.' [Citation.]" (People v. Lynch (2010) 50 Cal.4th 693, 725.)

Here, the trial court was operating within its latitude by prioritizing the efficiency of conducting a single trial over defendant's preference for keeping the charges against him severed so that his



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retained counsel could represent him against the charges in counts 1 and 2. Such prioritization is particularly necessary in the Superior Court of Riverside County. (See *People v. Engram* (2010) 50 Cal.4th 1131, 1136 ["In recent years, the Superior Court of Riverside County . . . has been severely overburdened by the substantial number of criminal cases awaiting trial in that county"].) Defendant does not contend that the counsel who was appointed, at his request following his inability to secure funds to expand the scope of retained counsel's representation, was ineffective. Thus, in the end, there is no indication that consolidation resulted in gross unfairness that deprived defendant of due process. Accordingly, we find no error.

### DISPOSITION

The judgment is affirmed.

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We concur: HOLLENHORST J. McKINSTER J.

1. Retired judge of the Placer County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
2. We granted defendant's request to augment the clerk's transcript with any papers filed in connection with the motion to consolidate. While the transcript refers to "papers," the trial court clerk was unable to locate any such documents.
3. All further statutory references are to the Penal Code unless otherwise indicated.

