

SUPREME COURT OF APPEALS OF WEST VIRGINIA
April 7, 2014 Argument Docket
LAWS Program - Madison, WV

2. State v. Thomas Fitzwater, No. 12-1487

Procedural and Factual Background:

This case involves a criminal appeal. The defendant, Thomas Fitzwater, appeals the sentencing order of the Circuit Court of Fayette County entered on October 29, 2012. The defendant was convicted of one count of possession with intent to deliver following a jury trial and was sentenced to a term of incarceration of two to thirty years.

The defendant requests that the Supreme Court of Appeals of West Virginia reverse his conviction and remand, or send this case back to the circuit court, for a new trial.

Defendant Fitzwater's Argument:

The defendant argues that the prosecutor's improper, prejudicial pleas to the jury in closing argument, to combat the drug problem in this State and to protect the safety of the community with their verdict, denied the defendant a fair trial. The defendant further argues that the circuit court erred in denying his motion for a mistrial following the prosecutor's improper comments during closing arguments. The defendant asserts that the prosecutor's comments were deliberate and intended to influence the jury to gain a conviction based on emotions rather than the evidence. The defendant also notes that while the circuit court sustained the trial counsel's objection to the closing argument, the court did not further instruct the jury to disregard the prosecutor's improper argument. The defendant asserts that statements were so inflammatory that the general jury instruction was insufficient to cure the defect.

Respondent State's Argument:

The respondent State argues that even if the prosecutor's comments were improper, the statements were not prejudicial. The State contends that the prosecutor did not ask the jury to make an example of the defendant. The circuit court properly instructed the jury to arrive at a verdict based on the evidence and not on community sentiment. The State asserts that the defendant was found with 150 pills inside a plastic bag, for which he did not have a prescription. Therefore, it is the State's position that the defendant was properly convicted of the crime for which he was charged.