

**Moore Vs. Georgia**

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**Court :** US Supreme Court

**Decided On :** 1987

**Appeal No. :** 484 U.S. 904

**Appellant :** Moore

**Respondent :** Georgia

**Judgement :**

MOORE v. GEORGIA - 484 U.S. 904 (1987)

U.S. Supreme Court MOORE v. GEORGIA , 484 U.S. 904 (1987)

484 U.S. 904

Linda S. MOORE

v.

GEORGIA.

No. 86-6914

Supreme Court of the United States

October 13, 1987

On petition for writ of certiorari to the Court of Appeals of Georgia.

The petition for a writ of certiorari is denied.

Justice WHITE, dissenting.

In *Scott v. Illinois*, [440 U.S. 367](#) (1979), this Court held that an uncounseled misdemeanor conviction is constitutionally valid if the offender is not incarcerated. The following Term, however, in *Baldasar v. Illinois*, [446 U.S. 222](#), 64 L. Ed.2d 169 (1980) (per curiam), this Court held that such a conviction may not be used under an enhanced penalty statute to convert a subsequent misdemeanor conviction into a felony with a prison term.

Here, petitioner was convicted and sentenced to a prison term under Ga.Code Ann. 40-6-391(C) (Supp.1987) which imposes a mandatory minimum sentence on a person convicted of driving under the influence of alcohol, where such person has at least two prior convictions for the same offense. Petitioner argued that *Baldasar* prohibited her conviction under 40-6-391(C), because this conviction relied upon her two prior, uncounseled convictions for driving under the influence. The Court of Appeals of Georgia

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rejected this contention, and determined that *Baldasar* was inapplicable here because 40-6-391(C) merely imposes a minimum prison term based on petitioner's prior convictions, and does not "increas[e] the maximum confinement authorized [or] conver[t] a misdemeanor offense into a felony ." 181 Ga.App. 548, 549, 352 S.E.2d 821, 822 (1987) (emphasis added).

Possibly because this Court was sharply divided in *Baldasar*, with no opinion for reversal gaining more than three votes, courts attempting to apply that decision have come to different conclusions concerning its meaning. See *Schindler v. Clerk of Circuit Court*, [715 F.2d 341](#), 344 (CA7 1983) ("In light of . . . the failure of the *Baldasar* majority to agree upon a rationale for its result, the scope of the decision remains unclear ") cert. denied, 465 U.S. 1068 (1984). Some courts have applied *Baldasar* as the Georgia court did here, and have allowed the use of prior, uncounseled convictions in cases quite similar to this one. E.g., *Commonwealth v. Thomas*, 510 Pa. 106, 112-114, 507 A.2d 57, 60-61 (1986); *State v. Orr*, 375

N.W.2d 171, 175-176 (N.D.1985). Others, however, have read Baldasar more broadly, and have disallowed the use of prior, uncounseled convictions in prosecutions akin to petitioner's . E.g., State v. Oehm, 9 Kan.App.2d 399, 401-403, 680 P.2d 309, 311-312 ( 1984); State v. Dowd, 478 A.2d 671, 677-678 (Me.1984).

Because the confusion over Baldasar's holding has led to uneven application of that case and conflicting decisions in the courts below, I would grant certiorari here to answer the outstanding questions concerning Baldasar's scope and proper application.

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