



State v. Curtis

2006 | Cited 0 times | Court of Appeals of Arizona | May 25, 2006

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of the Supreme Court

¶1 After a jury trial held in his absence, appellant Jeffrey Tyson Curtis was found guilty of six counts of sexual conduct with a minor under the age of twelve, all dangerous crimes against children. See A.R.S. § 13-604.01(B). The victim was his daughter; she was eight years old at the time of trial, and Curtis had committed the offenses when the child was in the second and third grades, between January 2002 and June 2004. Curtis was sentenced to six, consecutive, life terms of imprisonment, each with the possibility of parole after thirty-five years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967). Curtis has not filed a supplemental brief.

¶2 As counsel requested, we reviewed the entire record for fundamental error. That review showed the trial court had apparently believed it had no discretion but to sentence Curtis to consecutive, life terms of imprisonment with parole eligibility after thirty-five years. But A.R.S. § 13-604.01(B) states that for the offenses Curtis committed, a trial judge may impose either life terms of imprisonment or presumptive prison terms of twenty years. We ordered the state to file an answering brief addressing this potentially fundamental error.

¶3 In its answering brief, the state concedes that under § 13-604.01(B), the trial court had the discretion to sentence Curtis to life terms of imprisonment or presumptive, twenty-year terms. The state further concedes the trial court did not believe it could impose twenty-year terms and suggests that we remand this matter for the trial court to clarify whether it would have sentenced Curtis differently if it had known of the available alternatives. However, because the trial court apparently misconstrued the sentencing statute, it did not exercise the discretion afforded it. Therefore, the sentence was unlawfully imposed, and the error is fundamental. See *State v. Thues*, 203 Ariz. 339, 54 P.3d 368 (App. 2002) (imposition of illegal sentence is fundamental error). Accordingly, we vacate the sentence and remand this matter for resentencing.

¶4 We have found no other error that may be characterized as fundamental. The record contains ample evidence supporting the guilty verdicts and the finding that the victim was under the age of twelve at the time the offenses were committed. Curtis's convictions are affirmed.



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PHILIP G. ESPINOSA, Judge.

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, Jr., Judge.

