



Dubois v. State

2008 | Cited 0 times | Court of Appeals of Alaska | January 30, 2008

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding precedent for any proposition of law.

MEMORANDUM OPINION AND JUDGMENT

No. 5299

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

Over twenty-five years ago, Samuel Dubois reached a plea agreement with the State. Dubois agreed to plead no contest to three counts of lewd and lascivious acts toward children¹ and two counts of sexual abuse of a minor.² The parties agreed that the superior court would not impose more than 5 years to serve on each count and the State agreed not to prosecute Dubois for other uncharged misconduct.

In April of 1981, Superior Court Judge Thomas B. Stewart imposed 8 years with 5 years suspended on each of the three lewd and lascivious act counts and 5 years with 3 years suspended on each of the two sexual abuse of a minor counts. The unsuspended imprisonment was imposed concurrently.

Dubois was released on probation after completing his unsuspended imprisonment. Later, the State filed a petition to revoke Dubois's probation based on a charge that Dubois committed a first-degree sexual offense in North Carolina in 1988 (sexual penetration of a person under thirteen years old), and based on several other acts of sexual contact and sexual penetration with minors under thirteen in Alaska.

Dubois did not appear for his North Carolina trial, and to avoid prosecution, fled to Mexico where he lived for several years teaching and selling time shares before returning to North Carolina. The superior court in Juneau issued a no bail arrest warrant. In 1993, Dubois changed his plea and was sentenced on the North Carolina charges. After he was released by North Carolina in 2007, Dubois was returned to Alaska to face the petition to revoke probation.



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Based on the judgment of conviction in the North Carolina case, Superior Court Judge Patricia A. Collins found that Dubois violated probation. At disposition, Judge Collins revoked his probation and imposed the 5 years of suspended imprisonment. Dubois appeals.

Discussion

Dubois contends that as a result of the imposition of all 5 years of suspended imprisonment, he received an excessive sentence.

Based on the North Carolina conviction, Judge Collins found that Dubois committed other sexual offenses against children after he fled Alaska probation supervision. Judge Collins found that Dubois's misconduct in North Carolina, anal penetration, was more serious than his conduct in Alaska, and also found that one of the North Carolina victims was a family member. Judge Collins found that Dubois had an established record of deceiving potential employers so that he could obtain positions of authority and trust over children and then abuse them. Judge Collins found that Dubois poses "a very high risk to reoffend." She found that nothing seemed to deter Dubois, including lengthy incarceration, treatment efforts, and close supervision. Judge Collins found that Dubois needed to be isolated to protect the community.

Dubois argues that Judge Collins should not have focused on isolating Dubois, but should have considered his age (Dubois was sixty-five years old), his remorse, his positive past conduct, and his continued willingness to participate in treatment. Dubois points out that the probation officer recommended continuing him on probation so that he would face a longer period of supervision. However, Judge Collins concluded that it was most important to keep Dubois out of the community where he would have access to children for as long as possible. She found that Dubois repeatedly fled supervision. Judge Collins found that she had no reason to believe that supervision would be successful, but had every reason to believe that Dubois would follow his established pattern of fleeing the jurisdiction, and engaging in a similar pattern of misconduct wherever he fled.

Our examination of the sentencing record shows that Judge Collins considered the sentencing criteria from AS 12.55.005 in light of Dubois's original offenses and his conduct and probation violation following his original sentencing. We conclude that Judge Collins was not clearly mistaken when she emphasized Dubois's isolation and imposed all of Dubois's suspended imprisonment.

Conclusion

Dubois's sentence is **AFFIRMED**.

1. Former AS 11.15.134.
2. Former AS 11.41.440(a)(2).

