
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NUMBER: Aro-23-257

STATE OF MAINE v. LEE ANN DAIGLE

ON APPEAL FROM THE SUPERIOR COURT

AROOSTOOK

****BRIEF OF APPELLANT****

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II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Lee Ann Daigle was Indicted for Murder by a Grand Jury on or about June 9, 2022. (Appendix [hereinafter App.] at Page 1). The Indictment referenced the named victim of the crime as baby Jane Doe. (Id.). On or about June 10, 2022, the State of Maine moved to impound the Indictment, Grand Jury report, and arrest warrant which was issued as a result of the Indictment. (App. 1). The court granted the State's Motion and the arrest warrant was impounded until Ms. Daigle's arrest on or about June 13, 2022. (App. 1). Ms. Daigle, with the appearance of a Lawyer for the Day was informed of the charges on or about June 14, 2022, by Judge Langner. (App. 2). Ms. Daigle was appointed an attorney on or about the same day, and the State orally moved for a Harnish hearing. (App. 2).

On the same date, June 14, 2022, the court removed its impoundment order on the Indictment and related materials. (App. 2). Ms. Daigle entered a not guilty plea on or about June 14, 2023. (App. 3). On or about August 17, 2023, Ms. Dangle, through counsel, filed a motion and a hearing date was set for August 24, 2023. (App. 3). On or about August 24, 2023, the court set a bail of \$50,000.00 cash with additional conditions. (App. 3). The court amended bail on or about November 11, 2023 and set various deadlines for filing of motions and expert witness reports (App. 4-5).

The court extended various deadlines and the case was scheduled for a Judicial Settlement Conference on or about March 17, 2023. (App. 5). That conference was not held. (Id.). On or about March 28, 2023, the court set the case for a Rule 11 hearing in Houlton (Id.).

On that same date, April 6, 2023, an Information was filed along with a Waiver of Indictment which was signed by Ms. Daigle. (App. 5, 32-33). The Information which was filed charged Ms. Daigle with a single count of Manslaughter and was numbered "Count II." (App. 11). The court conducted an Arraignment on the Information and informed Ms. Daigle of the charges. (App. 5). The court conducted a hearing and accepted Ms. Daigle's plea to the single count of Manslaughter. (Sentencing Transcript [hereinafter S.T.] at Page 6, 33). Subsequent to the entry of the plea, the State dismissed the original charge of Murder. (App. 28). Pursuant to local court practice, Ms. Daigle completed a document entitled "Rule 11 Checklist." which outlined an agreement that Ms. Dangles plea was an "open" plea. (App. 29).

After accepting the plea, the court set the case for a subsequent sentencing date, June 20, 2023. (App. 7). Prior to the sentencing date, both parties submitted extensive sentencing memoranda. (See generally S.T.). On the date of the sentencing, June 30, 2023, the court considered the materials and arguments which were submitted by counsel. (See generally Sentencing Transcript).

On that same date, Ms. Daigle made a statement to the court (S.T. 37-40). During her statement, Ms. Daigle stated that she wished she had done things differently, apologized, and stated she wished that she had acted more responsibly. (S.T. 37-38). Ms. Daigle went on to state "I made a big mistake in 1985, and I accept whatever the consequence may be." (S.T. 39). Ms. Daigle concluded her statement by saying "I could've done more." (Id). "I should've done more." (Id.) "I cannot correct the past, but I can and will continue to move forward." (Id.).

After hearing from both parties and numerous witnesses, the court addressed Ms. Daigle directly. (S.T.47-48). While addressing Ms. Daigle directly, the court stated "I'm trying to

reconcile your claim at sentencing with the statements that were made to the officers during the investigation. (S.T. 47). They were either not accurate today at sentencing or they were not accurate statements to the officers. (Id.). There's no other option, from what the Court can see. (Id.). Ms. Daigle addressed the court, very briefly, stating: "What I told you is the truth." (S,T, 49) "What I feel is real." (S.T, 49). The court then proceeded to sentencing. (S.T. 47-55).

The court went on to consider the sentence, making note of the procedural implications of the date of the offense. (S.T. 50). The court noted the *Hewey* decision had not yet been decided at the time of the commission of the offense in this case.¹ (Id.). However, the court further found that it found the analysis helpful and important in making (its) decision on determining the appropriate sentence. (Id.). As a result, the court then went on to undertake a three step analysis much like the analysis under *Hewey*, making various, but brief findings regarding the facts of the case. (S.T. 50-55). The court also observed that there were a different set of sentencing guidelines in effect in 1985 than in 2023. (S.T. 50). Additionally, the court noted it needed to be mindful of the sentencing goals set forth in 17-A, 1151, the same guidelines which were in effect in 1985. (Id.).

When the court began the sentencing, it considered the age of the victim in setting the basic sentence. (S.T. 51). The court used the age of the victim to set the basic sentence in the 18 to 20 year range. (S.T. 52.). Then, in its next few statements, the court again considered the age

¹ Subsequent to 1993, when sentencing a person convicted of a felony in Maine, the sentencing court is bound by the analysis prescribed in *State v. Hewey* and currently codified at 17-A M.R.S. §1602 *State v. Hewey* 622 A.2d 1151 (Me. 1993). The *Hewey* analysis consists of three steps: (1) the court determines "a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual"; (2) the court determines "the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case"; and (3) the court determines "what portion, if any, of the maximum term of imprisonment . . . should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension." *State v. Ringuette*, 2022 ME 61, ¶ 9, 288 A.3d 393 (Me. 2022).

of the victim in the second stage of sentencing, noting the victim's age as an aggravating factor. (S.T. 52). Ultimately, the court set the sentence at 16 years to the Department of Corrections with all but 6 years suspended, and a period of probation for 3 years. (S.T. 54).

Ms. Daigle, through counsel, filed both a direct appeal and a motion for sentence review. (App. 12-14). This court issued a show cause order requesting an explanation of why the appeal should not be dismissed based upon its analysis under *State v. Huntley*, 676 A.2D, 501, 503 (Me. 1996) that the only grounds for a direct appeal of a sentence were that the court lacked jurisdiction, or the punishment was cruel, unusual or illegal. (App. 33-4). Defendant, through counsel filed a reply on or about September 1, 2023. (App. 35-36).

On or about September 6, 2023, the sentencing panel denied the Sentence Appeal. (App. 38). On or about September 8, 2023, this court allowed the direct appeal of the sentence to proceed. (App. 39).

ARGUMENT

A. Instead of adhering to the 1985 sentencing guidelines, the court's analysis incorporated requirements from current sentencing guidelines, ultimately making the sentence illegal.

On direct appeal, this court reviews only the legality, not the propriety, of a sentence. *State v. Dobbins*, 2019 ME 116, ¶ 51, 215 A.3d 769, (Me. 2019), *State v. Davenport*, 2016 ME 69, ¶ 8, 138 A.3d 1205 (Me. 2016). In considering direct appeals, this court will vacate a

sentence only when it is illegal and the illegality appears on the face of the record.² *State v. Murray-Burns*, 2023 ME 21, ¶ 14 290 A.3d 542 (Me. 2023). A direct appeal may be proper if a constitutional or statutory violation is apparent from the record, see, e.g., *State v. Grindle*, 2008 ME 38, ¶ 13-14, 942 A.2d 673, (Me. 2008) *State v. Bennett*, 2015 ME 46, ¶ 13, 114 A.3d 994, (Me. 2015). *State v. Ward*, 2011 ME 74, ¶¶ 14, 28, 21 A.3d 1033 (Me. 2011). *State v. Davenport*, 2016 ME 69 ¶9. When undertaking such a review, this court's review is de novo. *State v. Hemminger*, 2022 ME 32, ¶14, 276 A.3d 33 (Me 2022).

Maine law requires that defendants must be punished pursuant to the law in effect at the time of the offense. *State v. Hardy*, 489 A.2d 508, 510 (Me. 1985). (See also, *State v. Athayde*, 2022 ME 41, 277 A.3d 387 (Me. 2022) (Footnote 1). The sentencing guidelines in effect at the time of the offense in 1985 were contained at 17-A M.R.S. § 1151 and contained the following language:

The general purposes of the provisions of this part are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;
2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;
3. To minimize correctional experiences which serve to promote further criminality;

² This includes proportionality, as The Eighth Amendment to the United States Constitution forbids the imposition of cruel and unusual punishment. U.S. Const. amend. VIII. Further, article I, section 9 of the Maine Constitution provides that "all penalties and punishments shall be proportioned to the offense." Me. Const. art. I, § 9. To assess whether a sentence violates the Maine Constitution, this Court looks "to see whether a particular sentence is greatly disproportionate to the offense for which it is imposed," and second, if it is not greatly disproportionate, examines "whether it offends prevailing notions of decency." *State v. Lopez*, 2018 ME 59, ¶ 15, 184 A.3d 880 (quotation marks omitted). If a sentence fails either part of the test, it is unconstitutional. *Id.* In applying this test this court has found "that only the most extreme punishment decided upon by the Legislature as appropriate for an offense could so offend or shock the collective conscience of the people of Maine as to be unconstitutionally disproportionate, or cruel and unusual." *State v. Dobbins*, 2019 ME 116, ¶ 52, 215 A.3d 769 (Me. 2019).

4. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;
5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;
6. To encourage differentiation among offenders with a view to a just individualization of sentences;
7. To promote the development of correctional programs which elicit the cooperation of convicted persons; and
8. To permit sentences which do not diminish the gravity of offenses, with reference to the factor, among others, of the age of the victim. PL 1983, c. 152 (AMD). PL 1983, c. 480, §B24 (AMD).

The guidelines which were in effect at the time of the *sentencing hearing* in 2023 are contained at 17-A M.R.S. §1501 and contained the following language:

The general purposes of the provisions of this part are to:

1. Prevent crime. Prevent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety; [PL 2019, c. 113, Pt. A, §2 (NEW).].
2. Encourage restitution. Encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served; [PL 2019, c. 113, Pt. A, §2 (NEW).].
3. Minimize correctional experiences. Minimize correctional experiences that serve to promote further criminality; [PL 2019, c. 113, Pt. A, §2 (NEW).].
4. Provide notice of nature of sentences that may be imposed. Give fair warning of the nature of the sentences that may be imposed on the conviction of a crime; [PL 2019, c.113, Pt. A, §2 (NEW).].
5. Eliminate inequalities in sentences. Eliminate inequalities in sentences that are unrelated to legitimate criminological goals; [PL 2019, c. 113, Pt. A, §2 (NEW).].

6. Encourage just individualization of sentences. Encourage differentiation among persons with a view to a just individualization of sentences; [PL 2019, c. 113, Pt. A, §2 (NEW)].

7. Elicit cooperation of individuals through correctional programs. Promote the development of correctional programs that elicit the cooperation of convicted individuals;[PL 2019, c. 113, Pt. A, §2 (NEW)].

8. Permit sentences based on factors of crime committed. Permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:

A. The age of the victim, particularly of a victim of an advanced age or of a young age who has a reduced ability to self-protect or who suffers more significant harm due to age; [PL 2021, c. 170, §1 (AMD)].

In setting the basic sentence, in a *Hewey* style analysis, the court stated, "this was a newborn, there's no more fragile or helpless a victim that one can envision." (S.T. 51). The court went on to state "the impact on the victim was tremendous." (S.T. 51). "Her life was cut short before she even had a fighting chance at any life." (Id.). Based upon those observations, the court set the basic sentence at 18-20 years. (S.T. 52.).

In the second stage of its *Hewey* style analysis, the court noted the aggravating factors included the impact on the victim. (S.T. 52). The court went on to state "...this poor kid never had a chance and being dumped in the bushes on a frigid night guaranteed that the baby would die." (Id.). The court further stated the "evidence suggested that the child would've succumbed to the cold in ten minutes unaided, not the split second that you would think about if you look up and you're in the wrong lane in a vehicle or something of that nature." (S.T. 52).

While the 17-A M.R.S. §1151 mentions the need to address the "gravity of the offenses, with reference, among others to the age of the victim," the sentencing court did more than make

reference to the age of the victim, instead focusing the first two phases of its analysis on the age of the victim. In fact, its primary focus in the first two steps of *Hewey*-style analysis focused largely on the age of the victim alone and seemingly on the mandate in 17-A M.R.S. §1501 requiring courts to specifically account for victims of a young age who have reduced ability to self-protect and suffer more significant harm due to age.

While significant consideration of the victim's age was no doubt appropriate, it seems the court was primarily focused on the age of the victim in the first two phases of its analysis and it surpassed the requirements of M.R.S. §1151, the guidelines which were in effect in 1985 in its analysis. On the face of the record, it is apparent that the court, applied the language of 17-A M.R.S. §1501, the modern sentencing guidelines and not 17-A M.R.S. §1151, the guidelines which were in effect in 1985 in its analysis.

At some, level the court's statements demonstrate that it was using an analysis incorporating the concepts and requirements of the modern guidelines. As a result, it appears that the sentencing court used the improper statutory construction in setting the sentence, making the sentence illegal.

B. The Court did not give the Defendant, Ms. Daigle, adequate Due Process in the way it questioned her during the sentencing hearing.

The United States and Maine Constitutions guarantee that "[n]o person shall be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V; Me. Const. art. I, § 6-A. A court "is accorded wide discretion in the sources and types of information that may be relied upon" at sentencing, *State v. Farnham*, 479 A.2d 887, 890 (Me. 1984). Additionally,

sentencing courts are "not limited to facts found at trial," *State v. Gallant*, 600 A.2d 830, 832 (Me. 1991). Sentencing courts "are limited only by the due process requirement that such information must be 'factually reliable and relevant.'" *State v. Bennett*, 2015 ME 46, ¶ 22 114 A.3d 994 (Me. 2015).

Federal cases have interpreted the due process clause as requiring a defendant not to be sentenced on false information . . . and require "that the defendant be given an adequate opportunity to refute information relied on at sentencing." *State v. Bennett*. 2015 ME 46 ¶ 23. The Federal Constitution does not, however, "restrict the view of the sentencing judge to the information received in open court." *Williams v. New York*, 337 U.S. 241, 251, 69 S. Ct. 1079, 93 [**1002] L. Ed. 1337 (1949).

To meet due process requirements, the sentencing procedure must afford a defendant the opportunity to deny or explain information considered in determining the appropriate sentence. *Gardner v. Florida*, 430 U.S. 349, 362, 97 S. Ct. 1197, 1206, 51 L. Ed. 2d 393 (1977). The purpose of this requirement is to provide the defendant with an opportunity to dispute inaccuracies in information that is considered in determining the sentence. See *United States v. Leonard*, 589 F.2d 470, 472 (9th Cir. 1979). For purposes of review, the record should reflect the judge's factual conclusions with respect to controverted facts. *State v. Hardy*, 489 A.2d 508, 512 (Me. 1985).

In the present case, the court suggested to Ms. Daigle that she had to reconcile her statements to law enforcement with statements she made to the court. (S.T. 47). More specifically, the court stated that what " jumps out is the claim that this has been agonizing, terrorizing her, this secret, is inconsistent with the statements that were made to the officers

during the interviews, things such as, hadn't given any thought. . ." (S.T. 47) "And so I'm trying to reconcile your claim at sentencing with the statements that were made to the officers during the investigation." (Id.) "They were either not accurate today at sentencing or they were not accurate statements to the officers." (Id.) "There's no other option, from what the Court can see." (Id.).

The court inquired if Ms. Daigle wanted address the court's observations or go directly to sentencing by stating "if she wants time to address that, she can." (S.T. 47). "If not, I'll simply make my decision with the information that's been made available up to this point." (S.T. 47). Being even more specific, the court stated it was "looking at page 25 of 62 of one of the interview transcripts" which were provided as part of the State's sentencing memorandum. (S.T. 47-48).

The court observed the transcript stated "Have you ever thought about it since?" (S.T. 48-49). "Answer, No." (S.T. 49). "And so that's inconsistent with a claim that this has been on someone's mind and they've been suffering in silence on this secret for quite some time, whereas the responses were unequivocal, didn't think about this child afterwards." (Id.). "So that's -- that's where the inquiry comes from." (Id.).

Ms. Daigle chose to answer the court's inquiry by stating "Your Honor, when I spoke to the police, I was nervous, scared, and embarrassed." (S.T. 49). "I did not tell the police everything." (Id.). "I've tried to block the night out, but I can't." (Id.). "What I told you is the truth." (Id.) "What I feel is real." (Id.)

The court's approach seems to have been to engage Ms. Daigle by indicating the court would make findings regarding Ms. Daigle's trustworthiness or honesty and then make

conclusions regarding the sentence, depending on her response. The way the court inquired regarding Ms. Daigle's desire to address the court's observation, it is unclear if Ms. Daigle was in a position to give an appropriate answer. In effect, the way in which the court asked Ms. Daigle about the contradictions it saw, Ms. Daigle would have had to implicate herself in being dishonest to the police during the investigation or alternatively being dishonest with the court during the sentencing process.

In as much as the court made this inquiry of Ms. Daigle in this manner, it seems she was not effectively, given the opportunity to deny or explain information considered in determining the appropriate sentence. In fact, given the way that the court asked her questions, she was not given an effective opportunity to dispute inaccuracies in information that were considered in determining the sentence. Even though the court took a recess for her to confer with counsel after bringing up the concerns it had, the court's inquiry left Ms. Daigle in a position where she could attempt to answer the court, or stay silent.

On one hand, the court stated it wanted her to reconcile the inadequacies. However, on the other hand, it seemed that the court placed her in a position where she either had to concede dishonesty with law enforcement or erode the court's perception of her as having been honest with the court during her earlier statement to the court including her statements where she accepted responsibility. Alternatively, Ms. Daigle could have stayed silent and chosen not to address the court's inquiry at all. However, given the fact that the court inquired about this issue, and stated that it would go to sentencing if she did not answer the court's inquiry, she was placed in a nearly impossible position.

Given the nearly impossible position she was placed in, Ms. Daigle attempted to respond to the court's inquiry as well as she could. However, given the circumstances, she was not afforded the opportunity to not address the court's questions adequately. Even though Ms. Daigle took a brief recess with her attorneys to discuss the court's question and chose to make a statement, the court's inquiry likely deprived her of due process at sentencing.

CONCLUSION

The court should rule the sentence illegal and remand the case for resentencing.

DATED at New Sweden, ME, this __th day of January 2024

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CERTIFICATE OF SERVICE

I, Neil J. Prendergast, Esq., hereby certify that, on this date, I have caused two copies of the foregoing Brief of Appellant via First Class Mail to:

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DATED at New Sweden, ME, this __th day of January 2024

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