

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
MAY 1996 SESSION

FILED

June 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9511-CC-00332
Appellant,)
) Madison County
V.)
) Hon. Whit LaFon, Judge
)
JOHNNY FRED BAYLES,) (State Appeal - Sentencing)
)
Appellee.)

FOR THE APPELLEE:

John E. Herbison
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(On Appeal)

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OPINION FILED: _____

REMANDED FOR NEW SENTENCING HEARING

PAUL G. SUMMERS,
Judge

OPINION

The appellee, Johnny Fred Bayles, pled guilty to aggravated sexual battery in 1991. As a Range I offender, he was sentenced to twelve years in the Department of Correction. He was ordered to serve the first eleven months and twenty-nine days in the workhouse with the balance to be served in community corrections. In November 1993, the appellee was transferred from community corrections to the Department of Correction Adult Probation to serve the remainder of his sentence. One condition of probation was that the appellee have no contact with the victim.

In June 1995, a probation violation warrant charged the appellee with violation of the “no contact” condition. Following a revocation hearing, the trial court revoked the appellee’s probation and ordered him to serve the twelve-year sentence. The appellee was to serve eighteen months in the Department of Correction and the remainder of his sentence on probation.

The state brings this appeal claiming that the trial court erred in “favoring defendant with this lenient sentence.” The state’s argument, although well taken, is a little misdirected.

Tennessee Code Annotated Section 40-35-303 provides that “[a] defendant shall be eligible for probation ... if the sentence actually imposed upon such defendant is eight (8) years or less; provided, that a defendant shall not be eligible for probation under the provisions of this chapter if he is convicted of a violation of ... § 39-13-504.” Tenn. Code Ann. § 40-35-303(a) (1990). The appellee pled guilty to aggravated sexual battery as proscribed in § 39-13-504. The trial judge’s actions were not authorized by statute and constituted an illegal sentence. Thus, the state’s leniency argument must give way to the threshold finding that the sentence was illegal.

The appellee argues that the trial court's order is not appealable as of right. Because the state did not appeal from the sentence originally imposed, the appellee insists that the state is prevented from contesting the granting of probation at this juncture. We disagree. "Tennessee law gives the courts authority to correct an illegal sentence at any time, even if it has otherwise become final." Cheairs v. State, No. 02C01-9304-CC-0070 (Tenn. Crim. App. Oct. 26, 1994) citing State v. Burkhart, 566 S.W.2d 871, 873 (Tenn. 1978).

Because the imposition of an illegal sentence is a nullity, we remand for a new sentencing hearing. The appellee will receive credit for time already served.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

DAVID G. HAYES, Judge