

SECOND DISTRICT COURT OF APPEAL OF FLORIDA

Delisi v. State

627 So. 2d 117 (Fla. 2d DCA 1993) · Decided December 1, 1993

SUMMARY

The case of Delisi v. State involves Charles DeLisi's appeal from multiple drug trafficking, conspiracy, and RICO act convictions and sentences. The appellate court found that the trial court erred in departing from the sentencing guidelines, as being a 'supervising partner' in a drug operation is not a valid reason for an upward departure. The court reversed Charles' sentences and remanded for resentencing within the guidelines. The decision is based on the distinction between a 'supervising partner' and a 'ringleader' or 'Mr. Big' in a drug operation.

CASE DETAILS

COURT	Second District Court of Appeal of Florida
WRITING FOR THE COURT	Patterson, J.; Frank, C.J.; Campbell, J.
JURISDICTION	Florida
DECIDED	December 1, 1993
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed multiple drug-trafficking, conspiracy, and RICO convictions and sentences, challenging, among other things, the trial court's upward departure from the sentencing guidelines.
STANDARD OF REVIEW	The appellate court reviewed the validity of the trial court's stated reason for departing from the sentencing guidelines.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Charles DeLisi v. State of Florida

TOPICS

- sentencing guidelines
- sentencing
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal law
- sentencing

QUESTIONS PRESENTED

1. Whether being a supervising partner in a drug-trafficking operation is a valid basis for an upward departure from the sentencing guidelines.
2. Whether the record supported treating Charles DeLisi as the ringleader or Mr. Big of the trafficking organization.

HOLDINGS

1. Being a supervising partner in a drug operation is not equivalent to being the ringleader and, standing alone, is not a valid reason for an upward departure from the sentencing guidelines.
2. The record did not support a finding that Charles DeLisi was the ringleader or Mr. Big of the trafficking organization.

KEY QUOTATIONS

“We first conclude that being a “supervising partner” in a drug operation is not the same as being the ringleader and is not in itself a valid reason for an upward departure.” (118)

“Reversed and remanded for resentencing within the guidelines.” (118)

FACTUAL BACKGROUND

Charles DeLisi participated in a large-scale marijuana-trafficking operation involving his brothers and other individuals. At sentencing, witnesses characterized Richard and Theodore DeLisi as the organization's leaders and Charles as primarily a worker involved in off-loading. The trial court nevertheless found Charles to be a supervising partner and imposed an upward-departure sentence totaling sixty-five years.

PROCEDURAL HISTORY

The trial court convicted Charles DeLisi of multiple drug-trafficking, conspiracy, and RICO offenses and imposed an aggregate sixty-five-year sentence. The court departed upward from the sentencing guidelines based solely on its finding that DeLisi was a supervising partner in the drug-trafficking ventures. The Second District affirmed the convictions but reversed the sentences and remanded for resentencing within the guidelines.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the sentences and remand for resentencing within the sentencing guidelines.

CASES CITED

- Fletcher v. State, 508 So. 2d 506, 507 (Fla. 4th DCA 1987)
- Kraft v. State, 583 So. 2d 365 (Fla. 4th DCA 1991)

OPINION

PATTERSON, J.

PATTERSON, Judge. Charles DeLisi appeals from multiple drug trafficking, conspiracy, and RICO act convictions and sentences. We find merit only in his contention that the trial court erred in departing from the sentencing guidelines.

We affirm Charles' convictions, but reverse his sentences and remand for resentencing. Charles DeLisi was involved in a large-scale marijuana trafficking operation with his brothers, Richard and Theodore J. (Teddy), and several other individuals. These operations resulted in numerous trials in Hardee and Polk Counties. Many of the defendants cooperated with the state in return for plea bargains.

The defendants received sentences ranging from probation to sixty-five years in prison. Charles received a sixty-five-year aggregate sentence which he now appeals. At the sentencing hearing, several members of the DeLisi organization testified that Richard and Teddy were the "Mr. Bigs" of the organization and that Charles was basically a "worker" engaged in off-loading.

The trial court concluded, "There's absolutely no question that Teddy DeLisi was at the top of the heap. There's no question but that Richard came somewhere below Teddy. But in my estimate, Chuck is third." The trial court then imposed a departure sentence as to Charles, citing on the record and in a contemporaneous written order that his reason for departure was "that Charles J. DeLi-si was a supervising partner in the ventures." He gave no other reason for departure.

Both Teddy and Richard had received sentences within the guidelines on a prior date. In deciding to depart from the guidelines, the trial court apparently relied on *Fletcher v. State*, 508 So.2d 506 (Fla. 4th DCA 1987), in which the court held that the defendant's role as the "Mr. Big," or ringleader, of the trafficking organization was a valid reason for an upward departure.

See also *Kraft v. State*, 583 So.2d 365 (Fla. 4th DCA 1991). We first conclude that being a "supervising partner" in a drug operation is not the same *118as being the ringleader and is not in itself a valid reason for an upward departure.

As the *Fletcher* court observed, all major drug operations inherently involve premeditation, planning, and by implication, supervision, which are not valid reasons for departure. *Fletcher*, 508 So.2d at 507. If we were to conclude that the term "supervising partner" is the equivalent of "Mr. Big" or the "ringleader," the trial court has already bestowed that distinction on Teddy DeLisi.

Additionally, the record does not support the conclusion that Charles was a "ringleader" or "Mr. Big." Reversed and remanded for resentencing within the guidelines. FRANK, C.J., and CAMPBELL, J., concur.