

SUPREME COURT OF RHODE ISLAND

State v. Pallister

916 A.2d 759 (R.I. 2007) · Decided January 19, 2007

SUMMARY

The Rhode Island Supreme Court affirmed William Pallister’s convictions and sentence following his nolo contendere pleas to two counts of first-degree child molestation sexual assault. The court held that the challenge to the sentencing court’s refusal to impose home confinement was not properly reviewable on direct appeal absent extraordinary circumstances, and that the imposed sentence was within the negotiated and statutory limits.

CASE DETAILS

COURT	Supreme Court of Rhode Island
JURISDICTION	Rhode Island
DECIDED	January 19, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed directly from a judgment of conviction and commitment entered after his nolo contendere pleas and sentencing, challenging the trial justice's conclusion that the court lacked statutory authority to impose home confinement as a condition of probation.
STANDARD OF REVIEW	A sentence generally is not reviewed on direct appeal absent extraordinary circumstances; sentence review ordinarily begins in the Superior Court under Rule 35 of the Superior Court Rules of Criminal Procedure.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	William Pallister v. State

TOPICS

- criminal procedure
- sentencing
- appellate procedure
- standard of review
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- appellate procedure
- sentencing
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the Supreme Court could review on direct appeal the trial justice's refusal to impose probation with home confinement as a condition.
2. Whether extraordinary circumstances warranted direct appellate review of Pallister's sentence.
3. Whether the sentence imposed was within the plea agreement, statutory limits, and applicable Superior Court sentencing benchmarks.

HOLDINGS

1. A challenge to the validity or legality of a sentence ordinarily is not reviewable on direct appeal; the proper procedure for sentence review begins in the Superior Court under Rule 35 unless extraordinary circumstances are shown.
2. Pallister failed to establish extraordinary circumstances warranting direct appellate review of his sentence.

KEY QUOTATIONS

“As this Court long has held, we will “ ‘not consider the validity or the legality of a sentence on direct appeal’ ” absent “ ‘extraordinary circumstances[.]’ ”” (916 A.2d at 760)

““Rather, we have repeatedly held that the proper procedure for a review of a sentence begins in the Superior Court under Rule 35 of the Superior Court Rules of Criminal Procedure.”” (916 A.2d at 760)

FACTUAL BACKGROUND

Pallister, then seventy-four years old, pleaded nolo contendere to two first-degree child molestation sexual-assault counts under a plea agreement that allowed cumulative sentences of up to twenty-five years on each count, with maximum time to serve capped at eight years. He requested probation with home confinement because of his age, community ties, and his seventy-eight-year-old wife's need for care. The trial justice instead imposed twenty years on each count, with six years to serve, and concluded that the home-confinement statute made Pallister ineligible for that option.

PROCEDURAL HISTORY

Pallister pleaded nolo contendere to two counts of first-degree child molestation sexual assault in exchange for dismissal of additional charges. The Superior Court imposed twenty years on each count, with six years to serve, after rejecting his request for probation with home confinement. The Rhode Island Supreme Court summarily affirmed, concluding that the sentence challenge was not properly reviewable on direct appeal and that no extraordinary circumstances justified an exception.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The papers were remanded to the Superior Court; no further substantive sentencing instruction was issued.

CASES CITED

- State v. Ibrahim, 862 A.2d 787, 793-94 (R.I. 2004)
- State v. Bettencourt, 728 A.2d 1101, 1114 (R.I. 1999)
- State v. Bettencourt, 723 A.2d at 1114

OPINION

PER CURIAM.

ORDER After pleading nolo contendere to two counts of first-degree child molestation sexual assault,¹ the defendant, William Pallister, was sentenced to a term of twenty years imprisonment, with six years to serve on each count.

The sole contention he raises on appeal is that the trial justice committed an error of law when he determined that the court was statutorily precluded from exercising its discretion to place Mr. Pallister on home confinement *760as a condition of probation. This case came before the Supreme Court for oral argument based on an order directing the parties to show cause why the issues raised in this appeal should not summarily be decided.

After reviewing the record and considering the arguments of counsel and the memoranda submitted by the parties, we are satisfied that the appeal may be decided without the necessity of further briefing or argument. We affirm the judgment of the Superior Court.

On November 26, 2004, Mr. Pallister pled nolo contendere to the two counts in exchange for which a third charge of first-degree child molestation sexual assault and two counts of second-degree child molestation sexual assault² were dismissed.

As a result of the plea negotiations, the trial justice agreed to limit defendant's sentence to twenty-five years at the Adult Correctional Institutions on each count, with maximum time to serve capped at eight years.

On the plea form, however, defendant reserved the opportunity to argue that he be placed on home confinement, in lieu of time to serve. Indeed, before sentencing, defendant submitted a memorandum in which he requested that given his age (he was, at the time, seventy-four years old), his extensive ties to the community, and his seventy-eight-year-old wife's need for care, he be sentenced to probation, with home confinement a condition of probation.

At the sentencing hearing, the trial justice rejected Mr. Pallister's request, ruling that the provisions of G.L.1956 § 42-56-20.2 made Mr. Pallister ineligible for home confinement. Instead, the trial justice sentenced defendant to a term of twenty years on each count, with six years to

serve. A judgment of conviction and commitment was entered on February 4, 2005, from which defendant timely appealed.

Now before this Court on direct appeal, Mr. Pallister contends that the trial justice erred as a matter of law when he determined that he was statutorily precluded from exercising any discretion to place defendant on home confinement as a condition of probation.

We conclude, however, that defendant's appeal is not properly before us. As this Court long has held, we will “ ‘not consider the validity or the legality of a sentence on direct appeal’ ” absent “ ‘extraordinary circumstances[.]’ ” *State v. Ibrahim*, 862 A.2d 787, 793-94 (R.I.2004) (quoting *State v. Bettencourt*, 728 A.2d 1101, 1114 (R.I.1999)). “Rather, we have repeatedly held that the proper procedure for a review of a sentence begins in the Superior Court under Rule 35 of the Superior Court Rules of Criminal Procedure.” *Id.* at 794 (quoting *Bettencourt*, 723 A.2d at 1114).

Here, Mr. Pallister pled *nolo contendere* with the knowledge that the court could impose a cumulative sentence of twenty-five years, with an eight-year “cap” to serve. Not only does the imposed sentence of twenty years, with six years to serve, fall within the bounds that the parties set in the aforementioned agreement, but it also is within the statutory parameters 3 and is consistent with the Superior Court sentencing benchmarks.

See Superior Court Sentencing Benchmark 35A. Given the circumstances surrounding the terms of the sentence imposed, we are satisfied that defendant has not shown “extraordinary circumstances” such as would warrant our review of the sentence on direct appeal.

Moreover, a review of the record reveals that the trial justice carefully considered a number of factors, including “the potential injurious effects of incarceration,” before imposing sentence. It is clear to us that the trial justice appropriately exercised his discretion in determining that a sentence of six years to serve was warranted, thus rendering futile the defendant's request that he be sentenced to probation, with home confinement.

Accordingly, we affirm the judgment of conviction and commitment, and we remand the papers to the Superior Court.. General Laws 1956 § 11-37-8.1 reads as follows: “First degree child molestation sexual assault. — A person is guilty of first degree child molestation sexual assault if he or she engages in sexual penetration with a person fourteen (14) years of age or under.”.

Section 11-37-8.3 reads: "Second degree child molestation sexual assault. — A person is guilty of a second degree child molestation sexual assault if he or she engages in sexual contact with another person fourteen (14) years of age or under.". Section 11-37-8.2, as amended by P.L. 1984, ch. 59, § 2 states: "Penalty for first degree child molestation sexual assault. — Every person who shall commit first degree child molestation sexual assault shall be imprisoned for a period of not less than twenty (20) years and may be imprisoned for life."

