

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Duke v. State

529 So. 2d 341 (Fla. Dist. Ct. App. 1988) · Decided August 4, 1988

SUMMARY

The court affirmed the convictions and sentences of Steven Duke for sexual battery and Mary Sue Duke for aiding and abetting sexual battery. It held that an indictment of a juvenile for an offense punishable by death or life imprisonment does not constitute a transfer requiring compliance with Florida Statutes section 39.111(6), and certified the issue to the Florida Supreme Court as a matter of great public importance.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Barfield; Thompson; Nimmons
JURISDICTION	Florida
DECIDED	August 4, 1988
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions and sentences for sexual battery and aiding and abetting sexual battery.
STANDARD OF REVIEW	The court reviewed the claimed sentencing error and the trial court's treatment of Mary Duke as an adult for abuse of discretion and statutory compliance.
PRECEDENTIAL VALUE	Published opinion; certified question concerning a matter of great public importance.
PARTIES	Steven Duke, Mary Sue Duke v. State of Florida

TOPICS

- statutory interpretation
- sentencing
- criminal procedure
- appellate procedure
- appellate jurisdiction

PRACTICE AREAS

- criminal law
- juvenile justice
- sentencing
- appellate practice

QUESTIONS PRESENTED

1. Whether the issues raised by Steven Duke warranted reversal of his conviction and sentence for sexual battery.
2. Whether a juvenile charged by indictment with an offense punishable by death or life imprisonment has been 'transferred' for purposes of section 39.111(6), Florida Statutes (1985), thereby requiring consideration of a predisposition report, statutory adult-sanction criteria, and written findings.
3. Whether the trial court erred by treating Mary Sue Duke as an adult without making the written findings required by section 39.111(6).

HOLDINGS

1. An indictment for an offense punishable by death or life imprisonment does not constitute a 'transfer' within the meaning of section 39.02(6), Florida Statutes (1985).
2. The trial court did not err in treating Mary Sue Duke as an adult without making the written findings required by section 39.111(6), because her indictment for a life felony did not constitute a statutory transfer.
3. Steven Duke's conviction and sentence were affirmed because the court found no merit in the issues raised on appeal.

KEY QUOTATIONS

“Reading the provisions of chapter 39 in pari materia, we find that an indictment for an offense punishable by death or life imprisonment does not constitute a “transfer” within the meaning of section 39.02(6), Florida Statutes (1985), which would require compliance with the provisions of section 39.111(6).” (529 So. 2d at 342)

FACTUAL BACKGROUND

Steven Duke was convicted and sentenced for sexually battering an eleven-year-old child. Mary Sue Duke, his fifteen-year-old wife, was convicted of aiding and abetting the sexual battery, a life felony, and received a seven-year sentence. Mary argued that the trial court failed to consider a predisposition report and the statutory criteria for adult sanctions and failed to make the required written findings under section 39.111(6), Florida Statutes (1985).

PROCEDURAL HISTORY

Steven Duke appealed his conviction and sentence for sexual battery of an eleven-year-old child. Mary Sue Duke, who was fifteen years old, appealed her seven-year sentence for aiding and abetting the commission of the sexual battery, arguing that the trial court failed to comply with the statutory requirements governing the imposition of adult sanctions on juveniles. The district court affirmed both convictions and sentences and certified the statutory issue concerning indictment and transfer to the Florida Supreme Court as a matter of great public importance.

DISPOSITION

affirmed

CASES CITED

- Goodson v. State, 392 So. 2d 1335 (Fla. 1st DCA 1980)
- State v. Goodson, 403 So. 2d 1337 (Fla. 1981)
- State v. Upshaw, 469 So. 2d 922 (Fla. 3d DCA 1985)
- Myers v. State, 442 So. 2d 272 (Fla. 1st DCA 1983), petition for review denied, 450 So. 2d 487 (Fla. 1984)
- Judge v. State, 408 So. 2d 831 (Fla. 4th DCA 1982)
- Postell v. State, 383 So. 2d 1159 (Fla. 3d DCA 1980)
- Whidden v. State, 374 So. 2d 543 (Fla. 2d DCA 1979)

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