MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 10-64
Docket No. Ken-09-430

STATE OF MAINE

v.

GREGORY E. KIMBALL

Argued April 14, 2010
Decided May 11, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Gregory E. Kimball appeals from a judgment of conviction entered in the Superior Court (Kennebec County, *Marden, J.*) following his conditional guilty plea, pursuant to M.R. Crim. P. 11(a)(2), to two counts of gross sexual assault (Class A), 17-A M.R.S. § 253(1)(B) (2009), involving separate victims.[1] Kimball raises two issues on appeal.

Contrary to Kimball's first contention, the court did not err in determining that inculpatory written and verbal statements Kimball made to law enforcement officers during and after a polygraph test were voluntary and did not err in denying Kimball's motion to suppress those statements.[2] *See State v. Dion*, 2007 ME 87, ¶¶ 32-33, 928 A.2d 746, 752 (holding that, for purposes of determining whether a confession is admissible in evidence, the State bears the burden of proving beyond

[1] The two instances of gross sexual assault occurred in or around July 2003. Title 17-A M.R.S. § 253(1)(B) was non-substantively amended by P.L. 2003, ch. 711, § B-2 (effective July 30, 2004).

[2] To the extent certain of the court's subsidiary factual findings, relating generally to the sequence of certain events and identification of officers, are clearly erroneous, they constitute harmless error. M.R. Crim. P. 52(a).

a reasonable doubt that the defendant's statement was voluntary; stating also that we review the motion court's findings of fact deferentially for clear error and its application of legal principles to those findings de novo); *State v. Sawyer*, 2001 ME 88, ¶ 9, 772 A.2d 1173, 1176 (reviewing factors that have been considered when determining whether a confession was voluntary); *see also State v. Bowden*, 342 A.2d 281, 285 (Me. 1975) (holding that admissions made by an accused after a polygraph exam has ended, though made in response to questions prompted by the examiner's interpretation of the accused's reactions during the exam, are admissible if found to be voluntary beyond a reasonable doubt).

Kimball also contends that the court erred when it imposed consecutive sentences. Kimball has not shown that his sentence was illegal or illegally imposed and that the illegality appears plainly on the face of the appeal record, and we therefore affirm the imposition of consecutive sentences.[3] *See State v. Schmidt*, 2010 ME 8, ¶ 5, 988 A.2d 975, 976-77 (stating that, on direct appeal, we review as a matter of right only the legality of the sentence, not its propriety, when the defendant claims that the sentence is illegal or imposed in an illegal manner and the illegality appears plainly in the record); *see generally State v. Weeks*, 2000 ME 171, ¶ 11, 761 A.2d 44, 47 (affirming the imposition of consecutive sentences where the defendants failed to demonstrate on direct appeal that a sentencing infirmity appeared "on the record so plainly as to preclude rational disagreement as to its existence" or that the court exceeded its statutory powers (quotation marks omitted)); 17-A M.R.S. § 1256(2) (2009).

The entry is:

Judgment affirmed.

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[3] Kimball's application for leave to appeal his sentence was denied, precluding a review of the propriety of his sentence. M.R. App. P. 20; *see also State v. Schmidt*, 2010 ME 8, ¶¶ 5, 7, 988 A.2d 975, 976-77.

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