EVAN RAMSEY, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-8846, No. 4988

COURT OF APPEALS OF ALASKA

June 15, 2005, Decided

NOTICE:

MEMORANDUM DECISIONS OF THIS COURT DO NOT CREATE LEGAL PRECEDENT. SEE ALASKA APPELLATE GUIDELINES FOR PUBLICATION OF COURT OF APPEALS DECISIONS. ACCORDINGLY, THIS MEMORANDUM DECISION MAY NOT BE CITED FOR ANY PROPOSITION OF LAW, NOR AS AN EXAMPLE OF THE PROPER RESOLUTION OF ANY ISSUE.

PRIOR HISTORY: [*1]

Appeal from the Superior Court, Fourth Judicial District, Bethel, Mark I. Wood, Judge. Trial Court No. 4BE-97-167CR.
Ramsey v. State, 56 P.3d 675, 2002 Alas. App. LEXIS 202 (Alaska Ct. App., 2002)

COUNSEL: Marvin Hamilton, Assistant Public Defender, Bethel, and Barbara K. Brink, Public Defender, Anchorage, for Appellant.

John A. Scukanec, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Scott J. Nordstrand, Acting Attorney General, Juneau, for Appellee.

JUDGES: Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges. MANNHEIMER, Judge, concurring.

OPINION BY: COATS

OPINION

MEMORANDUM OPINION AND JUDGMENT

COATS, Chief Judge.

Evan Ramsey took a .12 gauge shotgun to school and killed a fellow student, Joshua Palacios and the school principal, Ronald Edwards. Ramsey also assaulted several other teachers and students with the shotgun. As a result of this incident, Ramsey was ultimately convicted of two counts of murder in the first degree,[1] one count of assault in the second degree,[2] and fifteen counts of assault in the third degree.[3] Superior Court

Judge Mark I. Wood sentenced Ramsey to a composite term of 198 years to serve. Ramsey appeals his sentence, arguing that it is excessive. We affirm.

*Factual [*2] background*

We set out the facts of this case in an earlier opinion:[4]

On Wednesday morning, February 19, 1997, sixteen-year-old Evan Ramsey entered Bethel High School with a .12 gauge shotgun hidden under his jacket. Ramsey immediately walked toward the student common area where several students were sitting. At the nearest table sat Joshua Palacios, a fellow high school student, talking with several of his friends. Palacios began to turn around and stand up when Ramsey pulled out the shotgun and shot Palacios in the stomach. Palacios later died from his wounds. Two students who were sitting across from Palacios, S.M. and R.L., were also hit by pellets from the shotgun blast.

One of the art teachers at the high school, Reyne Athanas, was in the teacher's lounge when she heard the first gunshot. She entered the hallway and observed Ramsey shooting into the ceiling. She saw Palacios lying on the floor with another student. During this episode, Ramsey paced up and down the hall several times in a very threatening manner. She and Robert Morris, another school teacher, attempted to convince Ramsey to put the shotgun down and give up. Ramsey then aimed the gun at them, but did not shoot. Ramsey [*3] walked away from Athanas and Morris, heading in the direction of the school's main office where the school's administrative offices were located.

Meanwhile, Ronald Edwards, the school principal, had been walking through the school looking for Ramsey because he had heard that Ramsey was in the school with a gun. Edwards found Ramsey as he was approaching the main office. Ramsey aimed the shotgun at Edwards, and Edwards turned around to run back into the school's office. As Edwards was trying to get back into the office, Ramsey shot him in the back and shoulder. Edwards died in his office from the gunshot wounds.

Minutes after the shooting began, Bethel police officers arrived at the high school. Several officers entered the high school and saw Ramsey standing in the common area with the shotgun. Ramsey saw the officers and fired one round in their direction. After a brief exchange of gunfire, Ramsey put the shotgun down and gave up. According to the officers, as he threw the shotgun down, Ramsey yelled, "I don't want to die." Officers were quickly able to detain Ramsey and take him into custody.

A jury convicted Ramsey of two counts of [*4] murder in the first degree, one count of attempted murder in the first degree, and fifteen counts of assault in the third degree.[5] Judge Wood sentenced Ramsey to a composite term of 210 years of imprisonment.

Ramsey appealed to this court. In *Ramsey v. State*,[6] this court rejected most of Ramsey's arguments on appeal. But we concluded that Judge Wood erred in instructing the jury on the charge of attempted murder in the first degree.[7] We remanded the case to allow the

State to elect to retry Ramsey on the attempted murder in the first degree charge or any lesser offense, or in the alternative, to have the court enter a verdict against Ramsey for the offense of assault in the second degree.[8] Because we reversed Ramsey's conviction for attempted murder in the first degree, we noted that, on remand, Judge Wood would be required to resentence Ramsey. We therefore did not address Ramsey's contention that, in imposing the sentence, Judge Wood incorrectly relied on Ramsey's eligibility for parole.[9]

On remand, the State elected to have the court enter a verdict against Ramsey for the offense of assault in the second degree. On resentencing, [*5] Judge Wood reaffirmed his decision to impose maximum 99-year sentences for each of Ramsey's convictions for murder in the first degree. Judge Wood imposed these sentences consecutively, for a total sentence of 198 years of imprisonment. Judge Wood imposed all of the sentences for Ramsey's assault convictions to be served concurrently.

Ramsey argues that his sentence is excessive. He points out that, at the time of the offense, he was only 16 years old.[10] He argues that he was under extreme stress when he committed the offenses, has expressed great remorse, and has shown good prospects for rehabilitation during the time he has spent in prison. Specifically, he points to the *Neal/Mutschler* rule established by the Alaska Supreme Court, which requires "that where consecutive sentences for two or more counts exceeded the maximum sentence for any single count, the sentencing judge should make a formal finding that confinement for the combined term is necessary to protect the public."[11] Ramsey argues that Judge Wood could not find that a sentence of more than 99 years of imprisonment was necessary to protect the public.

But [*6] Judge Wood specifically addressed the *Neal/Mutschler* rule and did find that the sentence he imposed was necessary to protect the public. Although Judge Wood recognized the apparent progress that Ramsey had made in prison, and recognized his young age, Judge Wood emphasized that Ramsey's behavior involved "unexplained, extreme, unprovoked violence." He reasoned that it was necessary to isolate Ramsey to protect the public because, if Ramsey was ever released back into society, he might very well explode again with extreme violence when he faced the normal pressures of life.

We conclude that Judge Wood's findings justify the sentence which he imposed. A sentence of greater than 99 years of imprisonment should only be imposed in an exceptional case where the trial court concludes that it is necessary for the defendant to spend the rest of his life in prison.[12] But, in spite of Ramsey's young age at the time of the offense, Judge Wood could find that Ramsey's conduct justified such a sentence. Ramsey planned his crime, carried a shotgun to school, and hunted his victims down and killed them. Judge Wood's finding that Ramsey had engaged in "unexplained, extreme, and unprovoked violence" [*7] is supported by the record. We accordingly conclude that the sentence Judge Wood imposed is not clearly mistaken.[13]

The sentence is AFFIRMED.

CONCUR BY: MANNHEIMER

CONCUR

MANNHEIMER, Judge, concurring.

I agree with my colleagues that Ramsey's composite sentence of 198 years' imprisonment is not excessive under Alaska sentencing law. I write separately because the Court's main opinion fails to address the State's argument that Ramsey is procedurally estopped from challenging the length of his sentence.

The State argues that Ramsey is barred from challenging the length of his sentence because Ramsey did not challenge the length of his sentence when he pursued his previous appeal in this case. The State relies on our recent decision in **Hurd v. State, 107 P.3d 314, 329 (Alaska App. 2004)**, where we held that parties are "prohibited from raising claims in later appeals [in the same case] if those claims could have been raised in earlier appeals". Here are the underlying facts of Ramsey's two appeals:

In 1998, Ramsey was convicted of two counts of first-degree murder, one count of attempted murder, [*8] and fifteen counts of assault for his armed rampage at his high school. Superior Court Judge Mark I. Wood sentenced Ramsey to a composite term of 210 years' imprisonment, including two consecutive 99-year terms for the two murders.[14]

Ramsey appealed his convictions and his sentence. He did not directly challenge the overall length of his sentence, but he argued that a sentence of that length was unsupported for two reasons. First, Ramsey asked this Court to direct Judge Wood to reconsider the length of Ramsey's composite sentence because, in formulating that sentence, the judge had apparently labored under a misconception as to when Ramsey would become eligible to apply for discretionary parole. Second, Ramsey argued that Judge Wood had imposed what amounted to a life sentence without making the findings required by Alaska case law to support such a sentence.[15]

In our first decision in Ramsey's case, **Ramsey v. State, 56 P.3d 675 (Alaska App. 2002)**, we found it unnecessary to address his sentencing arguments because we reversed Ramsey's conviction [*9] for attempted murder -- meaning that Ramsey would have to be resentenced anyway. **Id. at 683**. At the ensuing resentencing, Judge Wood imposed a lesser sentence of 198 years to serve -- the sentence that Ramsey now challenges in the present appeal.

The State argues that the rule of procedural estoppel that we applied in *Hurd* should also be applied to Ramsey. The State points out that even though Ramsey attacked his initial 210-year sentence on procedural grounds (Judge Wood's apparent mistake about Ramsey's parole eligibility, and Judge Wood's arguable failure to make all the findings required to support the sentence), Ramsey never directly argued that a composite sentence of 210 years was excessive. The State contends that Ramsey *could* have attacked the length of his composite sentence in that prior appeal, but he did not, so he should now be barred from attacking the length of his now-reduced composite sentence.

In *Hurd*, the defendant was convicted of both kidnapping and third-degree assault, but the sentencing judge merged these two convictions because he concluded that, under the facts of Hurd's case, these two offenses were the "same offense" under the rule announced by the Alaska [*10] Supreme Court in *Whitton v. State*.[16] On appeal, Hurd attacked his kidnapping conviction, arguing that the jury had been inadequately instructed on the definition of "restraint". We agreed with Hurd, and we reversed his kidnapping conviction.[17]

But Hurd did not attack any aspect of his trial that would undermine the validity of his remaining conviction for the lesser offense of third-degree assault. Thus, when Hurd's case returned to the superior court, and the State announced that it did not wish to retry Hurd for kidnapping, the sentencing judge proceeded to enter judgement against Hurd on third-degree assault. Only then (in a second appeal) did Hurd challenge the evidentiary rulings and jury instructions at his trial pertaining to the third-degree assault conviction, as well as the sufficiency of the evidence to support that conviction.[18]

In other words, Hurd got what he asked for in his first appeal (a reversal of his kidnapping conviction) and then, when the superior court entered judgement against him on the remaining charge (third-degree assault), Hurd [*11] for the first time asserted that this assault conviction was also flawed by trial errors. Hurd knew, or should have known, that these claims of error would be ripe for decision if we agreed with him that his kidnapping conviction was flawed, but Hurd did not raise these claims in his first appeal. We concluded that, under these circumstances, Hurd was barred from holding these claims in reserve for a second appeal.[19]

Ramsey's case is different. In Ramsey's first appeal, he argued that his conviction for attempted murder was flawed because of an erroneous jury instruction regarding the culpable mental state required for this crime. Ramsey also contended that, because of mistakes at the sentencing hearing, Judge Wood should be directed to reconsider his sentence. If Ramsey proved successful in any of these claims, his success would not mean that an attack on the overall length of his sentence would be ripe for decision. Rather, his success on these claims would *moot* any attack on the overall length of his sentence -- because the superior court would be obliged to reconsider that sentence.

This is indeed what happened in Ramsey's first appeal. We agreed with Ramsey that [*12] the jury had been misinstructed on the elements of attempted murder, and we therefore ruled that the State would have to choose between retrying Ramsey for this crime or settling for a conviction on the lesser offense of second-degree assault. In either event, Ramsey would have to be resentenced. For this reason, we declined to reach Ramsey's attacks on his sentence. Had Ramsey also challenged the overall length of his 210-year sentence in that first appeal, our decision would have been the same: we would not have addressed that claim.

For these reasons, our decision in *Hurd* does not preclude Ramsey from challenging the overall length of his modified (198-year) sentence in this, his second appeal.

[1] AS 11.41.100(a)(1)(A).
[2] AS 11.41.210(a)(1).
[3] AS 11.41.220(a)(1)(A).
[4] **Ramsey v. State, 56 P.3d 675 (Alaska App. 2002)**.
[5] **Id. at 677**.
[6] 56 P.3d 675.
[7] Id. at 680-83.
[8] Id. at 683.
[9] *Id*.
[10] **Id. at 676**.
[11] **Neal v. State, 628 P.2d 19, 21 (Alaska 1981)**; **Mutschler v. State, 560 P.2d 377, 381 (Alaska 1977).**
[12] **Kanulie v. State, 796 P.2d 844, 848 (Alaska App. 1990)**.
[13] *See* **McClain v. State, 519 P.2d 811, 813-14 (Alaska 1974)**.
[14] **Ramsey v. State, 56 P.3d 675, 677 (Alaska App. 2002)**.
[15] *See Ramsey v. State*, Court of Appeals File No. A-7295, Appellant's Opening Brief, pp. 31-34.
[16] **479 P.2d 302, 312-13 (Alaska 1970)**.
[17] *See* **Hurd v. State (I), 22 P.3d 12, 19-20 (Alaska App. 2001)**.
[18] **Hurd (II), 107 P.3d at 326-27**.
[19] **Id. at 330-31**.