

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20090644-CA
v.)	
)	F I L E D
Lance Keller,)	(January 28, 2010)
)	
Defendant and Appellant.)	2010 UT App 19

First District, Logan Department, 081101057
The Honorable Clint S. Judkins

Attorneys: David M. Perry, Logan, for Appellant
 Mark L. Shurtleff and Marian Decker, Salt Lake City,
 for Appellee

Before Judges McHugh, Orme, and Bench.¹

PER CURIAM:

Appellant Lance Keller appeals his sentence and the denial of a motion to reconsider his sentence on a conviction of aggravated sexual abuse of a child, a first degree felony. This case is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction.

Keller's notice of appeal was untimely to initiate an appeal of his sentence because it was not filed within thirty days of the entry of the signed judgment and sentence on March 2, 2009. See State v. Gerrard, 584 P.2d 885, 886 (Utah 1978) ("It is the sentence itself which constitutes a final judgment from which appellant has the right to appeal."); see also State v. Todd, 2004 UT App 266, ¶ 15, 98 P.3d 46 (stating that a final judgment occurs when the trial court enters the written judgment of conviction, including the sentence, into the record). The March 2, 2009 judgment and sentence entered was final and appealable. The notice of appeal filed on July 23, 2009, was not timely and did not confer jurisdiction on this court to consider an appeal of the sentence.

¹The Honorable Russell W. Bench, Senior Judge, sat by special assignment pursuant to Utah Code section 78A-3-102 (2008) and rule 11-201(6) of the Utah Rules of Judicial Administration.

The notice of appeal was filed within thirty days after entry of the district court's decision denying Keller's motion to reconsider his sentence. A trial court "may correct an illegal sentence or a sentence imposed in an illegal manner at any time." Utah R. Crim. P. 22(e). "Once a court imposes a valid sentence, it loses subject matter jurisdiction over the case," State v. Montoya, 825 P.2d 676, 679 (Utah Ct. App. 1991), and lacks jurisdiction to resentence the defendant, see id. The district court sentenced Keller to a prison term of fifteen years to life on his conviction of aggravated sexual abuse of a child, in accordance with Utah Code section 76-5-404.1(6), see Utah Code Ann. § 76-5-404.1(6) (2008). Because the sentence was within the statutory range for the offense, it was not an illegal sentence. Furthermore, the district court correctly observed that Keller did not argue that the sentence was imposed in an illegal manner. Instead, he claimed that the district court did not consider all mitigating circumstances in sentencing him to the longest minimum mandatory term of fifteen years, rather than imposing one of the shorter minimum mandatory terms of six or ten years, as allowed by statute, see id. Keller requested the district court to reconsider the fifteen year to life sentence imposed and "reduce the same to a lower category of six or ten years to life." Accordingly, the district court did not err in denying the motion to reconsider the sentence because it lacked jurisdiction to reconsider the legal--and legally imposed--sentence.

We dismiss the direct appeal from the sentence because we lack jurisdiction to consider it. We affirm the district court's denial of the motion to reconsider the sentence.

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge

Russell W. Bench, Senior Judge