

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040861-CA
v.)	
)	
Justin Warren Bass,)	F I L E D
)	(April 27, 2006)
)	
Defendant and Appellant.)	2006 UT App 167

Third District, Salt Lake Department, 031905349
The Honorable Deno Himonas

Attorneys: Larry N. Long, Salt Lake City, for Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
City, for Appellee

Before Judges Greenwood, Orme, and Thorne.

THORNE, Judge:

Justin Warren Bass appeals his mandatory sentence of three years to life in prison for attempted sodomy on a child, a first degree felony. See Utah Code Ann. §§ 76-5-403.1, -4-102(2) (2003). Bass argues that the trial court abused its discretion by sentencing him to prison rather than ordering probation and residential treatment. See id. § 76-5-406.5 (Supp. 2005) (limiting the circumstances in which certain child sex offenders may be allowed probation). We affirm.¹

The record reveals that the trial court sentenced Bass to a mandatory term of three years to life in prison, see id. § 76-4-102(2), because Bass had not been accepted into a residential treatment program, one of the prerequisites for qualifying for probation under section 76-5-406.5(1). See id. § 76-5-406.5(1)(h). Bass was denied admission into the treatment

¹The State argues that Bass's claim fails because he invited the error of which he now complains. After reviewing the record, we conclude that Bass did not attempt to lead the trial court into error and that this court should resolve the case on its merits.

program because the available space at the center was reserved for more dangerous offenders. The court concluded that, under the plain language of the relevant statutes, it had no other option but to sentence Bass to prison.

"We will set aside a sentence only if 'the sentence represents an abuse of discretion, if the trial judge fails to consider all legally relevant factors, or if the sentence imposed exceeds the limits prescribed by law.'" State v. Tryba, 2000 UT App 230, ¶10, 8 P.3d 274 (quoting State v. Gibbons, 779 P.2d 1133, 1135 (Utah 1989)). Here, Bass asserts that the legislature has evinced a clear intent that the least dangerous sex offenders be sent to residential treatment rather than to prison. Accordingly, he argues that the court should have placed him on probation and ordered him held in jail until a bed at his preferred treatment center became available.

Bass's legislative intent argument is misplaced because it conflicts with the plain statutory language. "[W]here the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning to divine legislative intent." Id. at ¶13 (quoting Horton v. Royal Order of the Sun, 821 P.2d 1167, 1168 (Utah 1991)). While the supreme court has previously stated that the rehabilitation of sex offenders is one of the legitimate purposes of section 76-5-406.5, see State v. Pritchett, 2003 UT 24, ¶30, 69 P.3d 1278, the plain language of that statute makes clear that the legislature intended the probation exception to apply only in a very limited set of clearly specified circumstances, see Utah Code Ann. § 76-5-406.5(1)(a)-(k). Under the rules established by the legislature, probation is only available when a defendant meets all of the requirements listed. See id. § 76-5-406.5(1).

It is undisputed that Bass has not been accepted into a residential treatment program, one of the requirements listed under the statute. See id. § 76-5-406.5(1)(h). Therefore, according to the plain language of the statute, the only sentencing option available to the court was to sentence Bass to prison. See id. §§ 76-5-406.5(1), -5-403.1, -4-102(2); see also Tryba, 2000 UT App 230 at ¶12 ("[I]f any one of the requirements is not established by a preponderance of evidence, probation is not an option."). A trial court does not exceed its permitted range of discretion when it follows the direct and explicit mandate of a sentencing statute.

Furthermore, even if Bass had been admitted into a treatment facility, he would not have been entitled to probation as a matter of right. Section 76-5-406.5 states:

[T]he court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion . . . finds probation to a residential sexual abuse treatment center to be proper.

Utah Code Ann. § 76-5-406.5(1) (emphasis added). This court has observed that "'even the establishment of all the section 76-5-406.5(1) criteria by a preponderance of the evidence does not compel a trial court to grant probation.'" Tryba, 2000 UT App 230 at ¶12 (quoting State v. Gentlewind, 844 P.2d 372, 376 (Utah 1992)). Rather, the decision to grant Bass probation would have rested in the trial court's discretion. See State v. Hammond, 2001 UT 92, ¶19, 34 P.3d 773 ("[T]he trial court has great discretion under the language of [section 76-5-406.5] and sentencing law generally, and will be under no obligation to afford the defendant probation even if it concludes that the evidence shows [that he is eligible for probation.]"). Even if Bass had been able to secure a treatment bed, we see nothing in the record to indicate that the sentence actually imposed would have exceeded the boundaries of the trial court's discretion under the circumstances.

For these reasons, we affirm.

William A. Thorne Jr., Judge

I CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

I CONCUR IN THE RESULT:

Gregory K. Orme, Judge