

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080238-CA
v.)	
)	F I L E D
Teddy Gordon Summerhays,)	(December 11, 2008)
)	
Defendant and Appellant.)	2008 UT App 447

Third District, Salt Lake Department, 061906796
The Honorable Randall N. Skanchy

Attorneys: Linda M. Jones, Salt Lake City, for Appellant
Mark L. Shurtleff and Brett J. DelPorto, Salt Lake
City, for Appellee

Before Judges Thorne, Bench, and McHugh.

PER CURIAM:

Teddy Gordon Summerhays appeals the sentence imposed by the district court. This matter is before the court on a joint motion to remand this matter to the district court for correction of the illegal sentence. We agree with the parties and remand the case for correction of the illegal sentence.

Summerhays asserts that his sentence of fifteen years to life for aggravated sexual abuse is illegal because it exceeds the statutory guidelines in effect at the time he committed the crime. A sentence is illegal if it exceeds the statutory guidelines. See State v. Higginbotham, 917 P.2d 545, 551 (Utah 1996). Summerhays committed his crime sometime between June and December 2004. In 2006, Summerhays was charged with aggravated sexual abuse of a child.

The statute applicable to his crime provided that "[a]ggravated sexual abuse of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than five years and which may be for life." Utah Code Ann. § 76-5-404.1(5) (Supp. 2003).

However, in 2007, section 76-5-404.1 was amended. The amendment provides that aggravated sexual abuse is punishable by a term of imprisonment not less than fifteen years, unless the court finds, in the interests of justice, that a lesser term of either ten or six years is warranted. See id. § 76-5-404.1(5)-(6) (Supp. 2007). At sentencing, the 2007 amended statute was erroneously applied to Summerhays. Summerhays was sentenced to fifteen years to life. This term exceeds the maximum sentence authorized under the 2003 version of section 76-5-404.1. Thus, the sentence is illegal and must be corrected. See State v. Nicholls, 2006 UT 76, ¶ 5, 148 P.3d 990.

Accordingly, this matter is remanded to the district court for correction of the illegal sentence.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Carolyn B. McHugh, Judge