

Court of Appeals, State of Michigan

ORDER

People of MI v Samantha Lynn Hughes

Jonathan Tukel
Presiding Judge

Docket No. 348991

Mark J. Cavanagh

LC No. 2018-013004-FH

Elizabeth L. Gleicher
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Gleicher, J. would grant the application, vacate defendant's sentence, and remand for resentencing before a different judge.

Defendant Samantha Lynn Hughes pleaded guilty in the district court to a single count of misdemeanor methamphetamine use, MCL 333.7404(2)(a) and a single count of Tampering with an Electronic Monitoring Device, MCL 771.3f. She received a probationary sentence but violated probation and her probation was discharged. She was bound over to the circuit court, where she again entered a guilty plea.

Hughes' sentencing guidelines put her in an intermediate sanction cell with a minimum term of 0 to 17 months. During the sentencing hearing, counsel revealed that Hughes was two months pregnant. The trial court departed from the guidelines solely because of Hughes' pregnancy and the trial court's intent to "protect" Hughes' fetus from possible drug use. The following excerpts from the transcript demonstrate that the sole reasons for the departure sentence of 13 to 24 months' incarceration related to Hughes' pregnancy:

THE COURT: July 9th is the due date.

One of the issues we need to discuss is my concern, I'll express this so you can be thinking of it, she has a history of methamphetamine use, cocaine use, and with an unborn child if she were to get out prior to delivery her child could very easily be damaged if she were to relapse into serious drug use, that's the concern as to how we're going to deal with that.

THE COURT: The problem I have got, even if I give her a year in jail, ten months, she's got almost five months in, she gets out a month or so before the baby is born and now she relapses into drug use it becomes extremely serious. Thinking about Ms. Hughes versus the unborn child I think I know whose side I'm on.

Now, we find that after being arrested she's now it turns out to be in the early stages of pregnancy, and due date is said to be July 9. She's got 143 days credit. Even if I give her a year in jail, she will be released, let's see here, late April/early May, so we have a month and a half, two months probably, of time out frogging around before she delivers the child, and now we have the risk of exposing the child to drugs, which is not a moral problem so much as actual physical damage. We all the time encounter people I'm sentencing who have fetal alcohol syndrome or damaged In utero by drug use, it happens all the time, it's a life long disability and we cannot take that risk, and a year in jail won't even do it.

So, I'm going to do what's necessary to protect the child and sentence the defendant to the Department of Corrections for no less than 13 months, no more than 24 months. Credit for 143 days time served. That will get her out probably a month after she delivers the child, that sounds just about right to me, and that will give us a healthy baby hopefully, and not just us but give Ms. Hughes and her family a healthy baby to work with and for all society, so that's what we're doing.

The trial court's decision to impose a prison sentence was not tethered to any of the sentencing guidelines or any principles of proportionality, and for that reason alone was improper. Further, Judge Powers sentenced Hughes to prison to protect Hughes' fetus, despite having no evidence whatsoever that Hughes was likely to subject the fetus to harm.

The sentence imposed also implicates Constitutional issues including Hughes' right to privacy, and in my view constitutes discrimination based on Hughes' pregnancy status. Those questions need not be explored, however, as the sentence imposed clearly contravenes the most basic precepts of sentencing. Rather than address the seriousness of the crimes Hughes committed or Hughes' background, the trial court fashioned a sentence based solely on her pregnancy. This was error, and merits either expedited review or the prompt vacation of Hughes' sentence.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 20 2019

Date


Chief Clerk