

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 11

STATE OF KANSAS)
----- Plaintiff,)
vs.)
HAROLD DEAN SPENCER,)
----- DEFENDANT.)

Case No. : 07-CR-2444

TRANSCRIPT OF SENTENCING

(PARTIAL TRANSCRIPT OF SENTENCE IMPOSED)

PROCEEDINGS had before the Honorable Matthew J. Dowd, Division 11 of the District Court of Shawnee County, Kansas, at Topeka, Kansas, on the 27th day of June, 2008.

APPEARANCES:

The Plaintiff, State of Kansas, appeared by and through Mr. Jason Hart, District Attorney's Office, 200 East 7th Street, Suite 214, Topeka, Kansas 66603.

The Defendant, Mr. Harold Dean Spencer, appeared in person and by and through his counsel, Ms. Cynthia Sewell, Public Defender Office, 701 SW Jackson, Third Floor, Topeka, Kansas 66603.

(THEREUPON, the partial transcript of the requested portion of the sentencing hearing in State of Kansas vs. Harold D. Spencer, Case Number 07-CR-2444, began as follows:)

THE COURT: Okay. In any event, I think what I've heard here today would seem to indicate that a departure is necessary, appropriate, and there are substantial and compelling reasons to depart. I think the age of the defendant, his prior record, and his support from his family and friends would lead the Court to Believe that this might have been an aberration or a momentary lapse in an otherwise good life, so I am going to depart.

I am going to adopt – since I'm going to also depart durationally, I think it's really not terribly significant how many years or months we give, because I am going to depart dispositionally. But I will adopt the State's theory and go from life imprisonment to a number of years-- or pardon me, a number of months as indicated on the guideline grid for the severity level 1. So I'm going to impose a 155 – month sentence to the Secretary of Corrections. The defendant's criminal history is “I” and that's the low range on the severity level number 1, 155 months.

I'm also going to depart dispositionally. I think that it would not, it would not serve the end of justice to incarcerate the defendant. I think that a significant amount of time in prison would be tantamount to a life sentence for this man in light of his age, and age is listed as one of the reasons to depart. Usually we think of that as a young person not really aware of his responsibilities, but I think it also can be interpreted as age in the sense of an elder person.

In any event, I'm going to impose the 155 months, 36 months of post-release supervision and 36 months supervised probation. Any thought of community corrections versus court services?

MS. SEWELL: Judge, he will do either one. I know that he's in and out of appointments with his wife, so he will do either one. Their home is open to visits. I don't have a preference either way.

THE COURT: Mr. Hart, any thought?

MR. Hart: Your Honor, given the departure is from an off-grid offense, I am at a loss as to give the Court any direction as to community corrections or court services.

THE COURT: All right. Okay. Let's go with court services then. The defendant will be charged the costs of the case and the probation fee which is \$50. And what is his financial situation in regard to payment?

(THEREUPON, an off-the-record discussion was held between defense counsel and the defendant, WHEREUPON, the proceeding continued as follows:)

Ms. Sewell: \$1,283; \$485 for her.

THE COURT: Well, I think the defendant is financially capable of paying some attorney fees. He will also be required to submit to DNA and register as a sexual offender. I'll waive the application fee. I'll impose a \$300 attorney fee.

Is there an restitution here?

MR. HART: I'm not aware of any, Your Honor.

THE COURT: All right. The defendant will have the right to appeal, as will the State, within ten days of the date of this decision and the right to expungement of the conviction according to law.

Mr. Spencer, are you willing to accept probation under these terms and conditions?

DEFENDANT SPENCER: Yes.

THE COURT: All right. And also, we should impose the same sentence on Count 2. And they will run concurrent. That will be the order of the Court.

MR. HART: Your Honor, is the Court making any order in reference to contact with the victim witnesses?

MS. SEWELL: Judge, I would ask that there be no contact with children under 18 unless supervised.

THE COURT: Okay. That's appropriate under the circumstances. That will be all.

(THEREUPON, the requested portion of the sentencing hearing concluded.)