

12CA1142 Peo v Dobler 02-19-2015

COLORADO COURT OF APPEALS

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Court of Appeals No. 12CA1142
Jefferson County District Court No. 08CR1501
Honorable Dennis Hall, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Zachariah Clark Dobler,

Defendant-Appellant.

SENTENCE AFFIRMED

Division II
Opinion by JUDGE GRAHAM
Casebolt and Dunn, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced February 19, 2015

Cynthia H. Coffman, Attorney General, Rebecca L. Williams, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Douglas K. Wilson, Colorado State Public Defender, Ned R. Jaeckle, Deputy Public Defender, Denver, Colorado, for Defendant-Appellant

Defendant, Zachariah Clark Dobler, appeals from the sentence imposed upon revocation of his probation for second degree burglary. Defendant contends the sentencing court violated his constitutional right against double jeopardy when it resentenced him to six years in the custody of the Department of Corrections (DOC) after previously sentencing him to four years in DOC custody for the same crime. See U.S. Const. amends. V, XIV (“No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb”); Colo. Const. art. II, § 18 (“No person shall . . . be twice put in jeopardy for the same offense.”). For the reasons expressed in *People v. Castellano*, 209 P.3d 1208 (Colo. App. 2009), we affirm defendant’s sentence.

“We review de novo a claim that a conviction violates a defendant’s constitutional protection against double jeopardy.” *People v. Arzabala*, 2012 COA 99, ¶ 19.

Defendant originally pleaded guilty to second degree burglary and was sentenced to four years in the custody of the DOC. After he successfully completed a year in the DOC “boot camp” program, the sentencing court revisited the sentence and placed defendant on thirty months of intensive supervised probation. Defendant violated

his probation and the sentencing court resentenced him to six years in DOC custody.

In our view, the facts of this case are indistinguishable from those in *Castellano*, where a division of this court determined that a defendant's constitutional right against double jeopardy is not violated by resentencing when the defendant sought reduction in his sentence, and, therefore, lacked a legitimate expectation of finality in the original sentence. 209 P.3d at 1209-10. Here, like in *Castellano*, when defendant sought and received a reduction in his sentence to probation he accepted "the relevant probation statute authorizing the possibility of a more severe sentence for a subsequent revocation." *Id.* at 1210 ("If probation is revoked, the court may then impose any sentence . . . which might originally have been imposed" (quoting § 16-11-206(5), C.R.S. 2014)). Therefore, when defendant violated his probation, he was subject to resentencing to any sentence which originally could have been imposed.

The sentence is affirmed.

JUDGE CASEBOLT and JUDGE DUNN concur.