
MAINE SUPREME JUDICIAL COURT SITTING AS THE LAW COURT

LAW COURT DOCKET NUMBER: Aro-23-257

STATE OF MAINE v. LEE ANN DAIGLE

ON APPEAL FROM THE SUPERIOR COURT

AROOSTOOK

****REPLY BRIEF OF APPELLANT****

Neil J. Prendergast
Bar #9810 Counsel for Appellant
Lee Ann Daigle
PO Box 263
34 East Main Street
Fort Kent, ME 04743
(207) 316-4943

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES	ii
II. STATEMENT OF FACTS AND ARGUMENT.....	1
III. CONCLUSION	4

I. TABLE OF AUTHORITIES

MAINE CASE LAW

<i>Estate of MacComb</i> , 2015 ME 126, 124 A.3d (2015).....	3
<i>Hutchinson v. Bruyere</i> , 2015 ME 16, 111 A.3d 36 (Me. 2015)	3
<i>Major v. Wen Yih Chiang</i> , 2015 ME 26, 113 A.3d 228 (Me. 2015).....	3

MAINE RULES OF APPELLATE PROCEDURE

Maine Rule of Appellate Procedure 5(a).....	2
Maine Rule of Appellate Procedure 5(b)(1)(a)	2
Maine Rule of Appellate Procedure 8(i).....	2
Maine Rule of Appellate Procedure 8(c).....	3
Maine Rule of Appellate Procedure 8(c)(2).....	3

II. The Copy of the transcript of the Rule 11 hearing included with the State's brief as an "Addendum" does not comply with the Maine Rules of Appellate Procedure.

In this criminal appeal, counsel for Defendant Lee-Ann Daigle accepted this appeal after the withdrawal of prior trial counsel. (Appendix [herein after App.] at 9). Pursuant to accepting the appeal, Defendant's counsel was provided with a docket record, some additional documents and later a transcript of the sentencing hearing by the Law Court's clerk. (See generally App.) Upon request, counsel was also later provided with copies of the parties' sentencing memoranda, again by the Law Court's clerk. Trial counsel's original notice of appeal and transcript request did not request that a transcript of the Rule 11 hearing be produced. (App. 22).

In accordance with the Rules of Appellate procedure, Defendant's counsel contacted the State's counsel of record in this matter prior to 14 days before the filing of the appendix. Defendant's counsel and counsel for the State exchanged emails regarding the contents of the appendix. Pursuant to the Rules of Appellate Procedure and the emails exchanged, counsel for Defendant produced the appendix which was filed in this case on or about January 8, 2024 without objection from the State.

The appendix, which was filed with the court, includes numerous documents and contains documents required by the Maine Rules of Appellate Procedure. (See generally App.). The appendix did not include a copy of the transcript of the Rule 11 hearing as that transcript had neither been ordered, nor produced at the time of the filing of Defendant's brief. (See generally App.).

Subsequent to the filing of Defendant's brief and the appendix, the State then requested a transcript of the Rule 11 hearing. After that transcript was produced, the State included a copy of the same in its reply brief. (See "Addendum" in State's Reply Brief). The State did not move to expand the record or address the inclusion by filing any pleadings or additional requests of this court.

Maine Rule of Appellate Procedure 5(a) states in pertinent part:

Contents of Record. The record on appeal shall consist of the trial court clerk's record and exhibits filed in the trial court, the reporter's transcript of the proceedings, if any, and a copy of the docket entries.

Regarding criminal cases, the Maine Rule of Appellate Procedure 5(b)(1)(a) states in pertinent part:

(A) Order of Transcript. The appellant is responsible for ordering the transcript by using one of the methods prescribed by Rule 2A(d). Except as otherwise designated, the standard transcript in a criminal appeal shall include. . .the sentencing hearing, if sentencing is at issue on appeal.

Within 7 days after receipt of appellant's transcript order, appellee's counsel may order additional portions of the transcript by utilizing the requisite Judicial Branch form. . . .

Regarding the creation of an appendix, the Maine Rule of Appellate Procedure 8(i) states in pertinent part:

The parties shall confer and attempt to reach agreement on the contents of the appendix in compliance with this Rule. If the parties do not agree:

(1) No later than 14 days before the appellant's brief is due to be filed, the appellant shall deliver to the appellee a list of the documents that the appellant proposes to include in the appendix. . . the appellant shall deliver to the appellee the list of the documents that the appellant proposes to include in the appendix at least 14 days before the appendix is due to be filed.

(2) If the appellee wishes to have additional documents included in the appendix, the appellee must, within 7 days after notice of the appellant's list of documents, designate additional documents for inclusion in the appendix, and the appellant shall include those documents in the appendix, unless otherwise ordered by the court.

Compliance with the Rules of Appellate Procedure is important to the proper functioning of this court. *Estate of MacComb*, 2015 ME 126, 124 A.3d (2015). This court has stated that failure to comply with Maine Rules of Appellate Procedure, in particular Rule 8, prevents proper appellate review. *Major v. Wen Yih Chiang*, 2015 ME 26, 113 A.3d 228 (Me. 2015). The purpose of the appendix is to make available to each justice of the court those documents from the record that are particularly important to the review of the issues on appeal. M.R. App. P. 8(c). Although the contents of the appendix are also included in the record on appeal, see M.R. App. P. 8(c)(2), the appendix ensures that all members of the Court, whose chambers are located in various locations throughout the state, have access to important elements of the record. *Hutchinson v. Bruyere*, 2015 ME 16, 111 A.3d 36 (Me. 2015).

In the present case, the State did not comply with the Rules of Appellate Procedure. The State did not request that a copy of the Rule 11 transcript be made part of the appendix. The State also did not request a copy of the transcript until after Ms. Daigle's counsel filed a brief on her behalf. After Ms. Daigle's brief was filed, the State requested a copy of the transcript of the Rule 11 hearing and added it as what it calls an "Addendum" in its Reply. The State did not file a motion to expand or supplement the record.

At this point, the court need not consider the entirety of the Rule 11 transcript, because it was not made part of the appendix and its filing along with a brief does not comply with the Maine Rules of Appellate Procedure.

IV. CONCLUSION

This court should not consider the addendum in the State's reply brief, rule the underlying sentence illegal and remand the case for resentencing.

DATED at New Sweden, ME, this __th day of March 2024

Neil J. Prendergast, Esq.
Attorney for Appellant
Maine Bar No. 009810

CERTIFICATE OF SERVICE

I, Neil J. Prendergast, Esq., hereby certify that, on this date, I have caused two copies of the foregoing Reply Brief of Appellant via First Class Mail to:

Lara Nomani
Office of the Maine Attorney General
Six State House Station
Augusta, ME 04443

DATED at New Sweden, ME, this __th day of March 2024

Neil J. Prendergast, Esq.
Attorney for Appellant
Maine Bar No. 009810