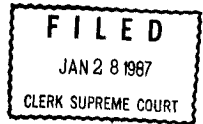


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)

Plaintiff-Appellee,)

vs)

MAX DEAN McALPIN,)

Defendant-Appellant.)

Filed January 28, 1987

6-510
86-782

182

Appeal from the Iowa District Court for Taylor County (1915) - Ray Hanrahan, Judge.

Defendant appeals the sentence imposed upon his guilty plea to lascivious acts with a child. **AFFIRMED BY OPERATION OF LAW.**

Verd R. Bailey and Richard G. Davidson of Davidson & Bailey, Clarinda, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Elizabeth E. Ciebell, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ. , but decided en banc.

Defendant appeals the sentence imposed upon his guilty plea to lascivious acts with a child. Judges Donelson, Schlegel, and Hayden would affirm the trial court. Chief Judge Oxberger, Judges Snell and Sackett would reverse and remand for resentencing. Pursuant to Iowa Code section 602.5106(1) (1985), the decision of the district court is affirmed by operation of law.

AFFIRMED BY OPERATION OF LAW