

SUMMARY STATEMENT

State v. Livingston J. Papse, Sr.

Docket No. 45616

In this case arising out of Bingham County, the Court of Appeals affirmed Livingston J. Papse's judgment of conviction and sentence for felony driving under the influence (DUI). Papse entered into a plea agreement whereby he pled guilty to felony DUI and the State agreed to concur with the recommendation in the presentence investigation report. The presentence investigator recommended retained jurisdiction. At sentencing, defense counsel recommended probation or retained jurisdiction. The State recommended a unified term of ten years, with a minimum period of confinement of seven years, with retained jurisdiction. The district court sentenced Papse to a unified term of ten years, with a minimum period of confinement of six years.

On appeal, Papse asserted a claim of fundamental error based on the assertion that the State breached the plea agreement by making comments fundamentally at odds with its agreement to concur in the presentence investigator's recommended sentence. Papse also contended that his sentence is excessive. The Court of Appeals held: (1) Papse failed to show fundamental error in relation to the State's sentencing recommendation; and (2) the district court did not abuse its sentencing discretion.