

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION FOUR

STATE OF MISSOURI,	)	No. ED92157
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	
FRED L. BYNUM,	)	Honorable John F. Garvey
	)	
Appellant.	)	FILED: November 24, 2009

Fred Bynum ("Defendant") appeals the judgment and sentence entered upon a jury verdict finding him guilty of three counts of statutory sodomy in the first degree, three counts of attempted statutory sodomy in the first degree, and two counts of sexual misconduct involving a child. The trial court found Defendant to be a prior and persistent offender and sentenced him to two consecutive life terms imprisonment on Counts I and II for statutory sodomy in the first degree, and one concurrent life term for Count VII, sexual misconduct involving a child. The court sentenced Defendant to five concurrent terms of fifteen years imprisonment for the remaining five charges, Counts III, IV, VI, VIII and IX.

#### AFFIRMED IN PART AND REMANDED IN PART

Division Four Holds: The judgment is remanded for resentencing. The trial court plainly erred in sentencing Defendant to fifteen years and life imprisonment on Counts VI and VII, respectively, for sexual misconduct involving a child, because the maximum penalty constituted seven years imprisonment on each count. The trial court's judgment is affirmed in all other respects.

Opinion by: Roy L. Richter, J.  
Kurt S. Odenwald, P.J., and George W. Draper III, J., concur

Attorneys for Appellant: Alexandra E. Johnson  
Attorneys for Respondent: James B. Farnsworth

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**