

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2006-0600, State of New Hampshire v. Francis L'Ecuyer, the court on September 4, 2007, issued the following order:**

The defendant, Francis L'Ecuyer, appeals the sentence imposed following his conviction for felonious sexual assault. He argues that the trial court erred in finding him eligible for the imposition of an extended sentence. We reverse and remand for resentencing.

RSA 651:6, III provides that if “authorized by paragraph I or II, and if notice of the possible application of this section is given the defendant prior to the commencement of trial, a defendant may be sentenced to an extended term of imprisonment.” The indictment contained the notation in the upper left-hand corner:

RSA 632-A:3  
Offense: Felonious Sexual Assault  
Class B Felony, special sentencing  
(For informational use only)

The State contends that this notation provided adequate notice to the defendant that he could be sentenced to an extended term of imprisonment. The State also asserts that because the facts are undisputed, we should review the trial court’s application of the law to the facts de novo. Accordingly, we will assume without deciding that the de novo review standard applies.

The legislature has determined that notice must be given to a defendant prior to trial that an extended term of imprisonment may be imposed. Where the indictment in this case cited neither the statute authorizing the imposition of an extended term of imprisonment nor its language, we cannot say that such notice was given. The cited indictment language was ambiguous at best and, contrary to the State’s assertion, did not satisfy its obligation to provide notice by imposing upon the defendant the burden of inquiring if such was the State’s intent.

Sentence reversed and remanded.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**