

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	
	)	ID No. 0307001199
SYLVESTER FRINK,	)	
	)	
Defendant.	)	

ORDER

1. On October 2, 2003, defendant Sylvester M. Frink pled guilty to Trafficking in Cocaine. Although defendant was eligible to be sentenced to a mandatory life sentence as an habitual offender pursuant to 11 *Del. C.* § 4214(b), the State offered a plea to 12 years at Level 5 (the first 3 years are mandatory), suspended after 100 months for 3 years at Level 4 Home Confinement, suspended after 6 months for 18 months at Level 3. Defendant was sentenced according to the plea agreement. Other charges were nolle prossed, including Possession with Intent to Deliver Cocaine, which carried a 15-year minimum mandatory sentence.

2. At the time of defendant's offense, the SENTAC presumptive sentence for Trafficking in Cocaine was 3 to 5 years at Level 5. Effective July 2004, the minimum mandatory sentence was reduced from three years to two years.

3. Supreme Court Administrative Directive 76 provides in part:

1. Any judge who finds a particular sentencing standard inappropriate in a particular case because of the presence of aggravating or mitigating or other relevant factors need not impose a sentence in accordance with the standards but such judge shall set forth with particularity the reasons for the deviation...
2. The sentencing standards are considered voluntary and non-binding; thus, no party to a criminal case has any legal or constitutional right to appeal to any court a statutorily authorized sentence which does not conform to the sentencing standards.

This Court's Administrative Directive ... requires that reasons be given for deviations from the SENTAC's sentencing guidelines because this Court *does* have appellate jurisdiction to review criminal sentences on the basis of alleged: unconstitutionality; factual predicates which are either false, impermissible, or lack minimum indicia of reliability; judicial vindictiveness, bias, or sentencing with a "closed mind;" and any other illegality. Except for these constitutional and legal constraints, it is well-established that appellate review of criminal sentences is limited in Delaware to a determination that the sentence is within the statutory limits. Delaware, unlike the federal and several state jurisdictions has not provided for appellate review of criminal punishments that deviate from sentencing guidelines.

Thus, the trial court must explain its reasons for doing so, but it is authorized to exceed the SENTAC guidelines without making any factual findings beyond those reflected in the jury's verdict.

4. The sentencing judge did not state any reasons, either on the written order or in court at the time of sentencing, for deviating from the SENTAC sentencing guidelines.

THEREFORE, the Court finds that defendant Sylvester M. Frink's sentence dated October 2, 2003 shall be modified to conform to the SENTAC guidelines in place at the time of sentencing.

IT IS SO ORDERED this 23rd day of April, 2008.

The Honorable Mary M. Johnston