## IN THE SUPREME COURT OF THE STATE OF DELAWARE

DENISE KRYKEWYCZ,	§
	§ No. 559, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ C.A. No. K11M-10-010
	§
Plaintiff Below-	§
Appellee.	<b>§</b>

Submitted: April 12, 2013 Decided: May 23, 2013

Before STEELE, Chief Justice, HOLLAND and RIDGELY, Justices

## **ORDER**

This 23<sup>rd</sup> day of May 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Denise Krykewycz, filed an appeal from the Superior Court's September 25, 2012 order dismissing her motion for sentence modification on the ground of lack of jurisdiction. We find no merit to the appeal. Accordingly, we affirm.<sup>1</sup>

entered an order designating Krykewycz as a Tier I Sex Offender.

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<sup>&</sup>lt;sup>1</sup> Krykewycz's motion was filed as part of a Superior Court Miscellaneous Proceeding, C.A. No. K11M-10-010, which the State initiated on October 27, 2011 seeking to have Krykewycz designated a Tier II Sex Offender. On December 9, 2011, the Superior Court

- (2) The record before us reflects that, on May 22, 2000, Krykewycz, a resident of New Jersey, was convicted by the Superior Court of New Jersey, Camden County, of sexual assault in the third degree, aggravated sexual contact in the third degree, eight counts of endangering the welfare of a child and two counts of witness tampering. She was sentenced to 36 years of incarceration and community supervision for life.<sup>2</sup> On August 21, 2005, Krykewycz was granted parole by the New Jersey Parole Board. The conditions of her parole required her to participate in polygraph testing, refrain from the use of any social networking device, cooperate with medical/psychological testing and successfully complete an appropriate community or residential counseling/treatment program.
- (3) In 2011, the State of Delaware agreed to the transfer of Krykewycz's supervision, pursuant to the Interstate Compact for the Supervision of Adult Offenders ("ICSAO"),<sup>3</sup> so that she could join her husband and children, who had re-located to Dover, Delaware. In September 2011, in connection with the transfer, Krykewycz registered as a sex offender in Delaware and signed a form consenting to participation in sex offender assessment, evaluation and treatment, as determined by the Delaware Department of Correction ("DOC").

<sup>2</sup> N.J. Stat. §2C:43-6.4 (b).

<sup>&</sup>lt;sup>3</sup> Del. Code Ann. tit. 11, §4358.

- (4) In March 2012, Krykewycz filed a motion in the Superior Court requesting a modification of her sentence and, specifically, those conditions of her designation as a Tier I Sex Offender to which she previously had consented. Following a hearing on November 2, 2012, the Superior Court dismissed her motion on the ground of lack of jurisdiction and this appeal followed. In her appeal, Krykewycz claims that, because she is not a danger to the community, she should not be required to fulfill the conditions of her designation as a Tier I Sex Offender in the State of Delaware to which she consented in 2011.<sup>4</sup>
- (5) We review *de novo* the Superior Court's determination that the ICSAO prohibits it from asserting jurisdiction over Krykewycz's petition.<sup>5</sup> The ICSAO is a formal agreement between member states to promote public safety by systematically controlling the interstate movement of certain adult offenders.<sup>6</sup> Both Delaware and New Jersey are signatories of the agreement. The Interstate Commission for Adult Offender Supervision ("ICAOS") has promulgated rules governing the transfer of an offender's supervision from a

<sup>&</sup>lt;sup>4</sup> Krykewycz also alleges that she was not placed on parole in New Jersey. However, the record before us reflects that the State of New Jersey considers her a parolee.

<sup>&</sup>lt;sup>5</sup> Candlewood Timber Group LLC v. Pan American Energy, LLC, 859 A.2d 989, 997 (Del. 2004).

<sup>&</sup>lt;sup>6</sup> Introduction, Interstate Comm'n for Adult Offender Supervision Rules, available at http://www.interstatecompact.org.

"sending state" to a "receiving state." Those rules have the force and effect of law in both Delaware and New Jersey.

- (6) While the "receiving state" supervises the offender in a manner determined by it that is consistent with the supervision of other similar offenders, 9 the "sending state" does not relinquish jurisdiction over an offender simply by transferring the supervision of that offender to the "receiving state." In fact, the "sending state" retains jurisdiction over the offender unless it is clear from the record that the "sending state" intends to relinquish such jurisdiction. Moreover, the ICSAO does not create a cause of action or any enforceable rights for offenders. 12
- (7) We have conducted a careful *de novo* review of the Superior Court's decision and the record below. There is no evidence that the State of New Jersey desires to relinquish jurisdiction over Krykewycz or that Krykewycz is being supervised in a manner inconsistent with other similar offenders in the State of Delaware, as required by the ICSAO. Moreover, based upon the record before us, the conditions of Krykewycz's supervision by the DOC appear to be entirely consistent with the conditions of her New

<sup>7</sup> ICAOS Rule 1.101.

<sup>&</sup>lt;sup>8</sup> Del. Code Ann. tit. 11, §4358; N.J. Stat. §2A:168-26.

<sup>&</sup>lt;sup>9</sup> ICAOS Rule 4.101.

<sup>&</sup>lt;sup>10</sup> Scott v. Commonwealth of Virginia, 676 S.E. 2d 343, 348 (Va. App. 2009).

<sup>11</sup> Id. at 347 (citing ICAOS Bench Book, §3.3.5).

<sup>&</sup>lt;sup>12</sup> M.F. v. State of New York Executive Dept. Div. of Parole, 640 F. 3d 491, 494-496 (2d Cir. 2011); Doe v. Pennsylvania, 513 F.3d 95, 103-107 (3d Cir. 2008).

Jersey parole. For all of the above reasons, we conclude that the Superior

Court correctly determined that it lacked jurisdiction under the ICSAO to

modify Krykewycz's sentence and correctly dismissed her motion on that

ground. To the extent that Krykewycz seeks a modification of the

conditions of her sentence, her remedy lies with the appropriate authorities

in the State of New Jersey. The judgment of the Superior Court must,

therefore, be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the

Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele

Chief Justice

5