IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT M. BENSON,	§	
	§	No. 300, 2013
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0204003341
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: August 14, 2013
Decided: August 28, 2013

Before **STEELE,** Chief Justice, **JACOBS** and **RIDGELY**, Justices

O R D E R

This 28th day of August 2013, upon consideration of the State of Delaware's motion to remand and the record below, it appears to the Court that:

(1) The defendant-appellant, Robert M. Benson, has appealed from the Superior Court's May 9, 2013 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to remand this matter to the Superior Court. For the following reasons, the Court concludes that the motion to remand must be granted.

(2) The record before us reflects that, in 2002, Benson and his co-defendant, Raheem Poteat, were found guilty of 3 counts of Robbery in the First

Degree, 3 counts of Aggravated Menacing, 6 counts of Possession of a Firearm During the Commission of a Felony and several other related offenses. Benson was sentenced to 2 years at Level V on each of his robbery convictions, to 3 years at Level V on each of the firearm convictions, to 1 year at Level V, to be suspended for consecutive Level II probation, on each of the aggravated menacing convictions and an additional 6 years at Level V, to be suspended for 6 years at Level II on the remaining convictions.

(3) Benson filed an appeal from his convictions. This Court reversed his convictions and remanded the matter to the Superior Court for re-sentencing.[1] Specifically, this Court directed the Superior Court to re-sentence Benson in accordance with its prior decision in *Poteat v. State*, 840 A.2d 599 (Del. 2003), which determined that Poteat's sentences constituted a double jeopardy violation requiring the Superior Court to merge the aggravated menacing and related possession charges into the charge of first degree robbery.

(4) On April 29, 2005, the Superior Court re-sentenced Benson as follows: 2 years at Level V on each of the 3 robbery convictions; 3 years at Level V on each of 3 weapon convictions; 1 year at Level V, to be suspended for consecutive Level II probation, on each of the aggravated menacing convictions;

[1] *Benson v. State*, 2004 WL 728521 (Del. Mar. 30, 2004).

and an additional 6 years at Level V, to be suspended for Level II probation, on the remaining convictions.[2]

(5) In 2008, Benson moved for postconviction relief pursuant to Rule 61, but did not allege any errors in his sentences. The Superior Court denied the motion and this Court affirmed.[3] Benson then filed a second postconviction motion, which the Superior Court denied as procedurally barred. This Court affirmed the Superior Court's judgment.[4] In March 2013, Benson moved for correction of an illegal sentence pursuant to Rule 35(a). The Superior Court denied the motion. This appeal followed.

(6) The State, laudably, now moves to remand this matter to the Superior Court because its April 29, 2005 sentencing order does not conform to this Court's directive to the Superior Court to re-sentence Benson in accordance with the *Poteat* decision. We have reviewed this matter carefully and agree with the State's position. We, therefore, conclude that this matter must be remanded to the Superior Court for re-sentencing of Benson in accordance with this Court's 2004 directive.[5]

[2] The Superior Court's April 29, 2005 sentencing order eliminated 3 weapon offenses, but maintained the sentences for aggravated menacing.
[3] *Benson v. State*, 2009 WL 1090062 (Del. Apr. 23, 2009).
[4] *Benson v. State*, 2011 WL 181463 (Del. Jan. 14, 2011).
[5] *Benson v. State*, 2004 WL 728521 (Del. Mar. 30, 2004).

NOW, THEREFORE, IT IS ORDERED that this matter is hereby remanded to the Superior Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice