

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID LEE MORRIS,	§
	§ No. 276, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0305000324
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 19, 2008

Decided: July 10, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 10th day of July 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, David Lee Morris, filed an appeal from the Superior Court's May 15, 2008 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In July 2003, Morris was charged with three counts of Rape in the First Degree and one count of Unlawful Sexual Contact. On January 7, 2004, he pleaded guilty to one count of the lesser-included offense of Rape in the Second Degree. In exchange for the plea, the State dismissed the remaining charges. Morris was sentenced to 15 years at Level V, to be suspended after 10 years for 5 years at Level III probation.

(3) In this appeal, Morris claims that the Superior Court abused its discretion when it denied his motion to correct an illegal sentence. He contends that it was a violation of his constitutional rights to sentence him to more than 2-5 years at Level V, the “presumptive” sentence for the crime under the SENTAC guidelines.¹

(4) The minimum mandatory prison term on a conviction of Rape in the Second Degree is 10 years at Level V.² Morris is, thus, serving the statutory minimum mandatory sentence. Moreover, that minimum mandatory sentence may not be reduced by the Superior Court.³ To the extent that Morris attempts to argue that a departure from the SENTAC guidelines provides a basis for his claim of an illegal sentence, that attempt is unavailing. It is well-settled that the SENTAC guidelines are voluntary

¹ The Superior Court based its decision on Rule 35(b), which provides that, absent extraordinary circumstances, a motion to modify or reduce a sentence must be made within 90 days of the date of sentencing.

² Del. Code Ann. Tit. 11, § 772(a) (2) h.

³ *State v. Sturgis*, 947 A.2d 1087, 1092 (Del. 2008).

and non-binding and provide no independent basis for an appeal of a sentence that is within the statutory authorization.⁴ Because Morris' claim is without merit, the Superior Court's judgment must be affirmed, albeit on a basis different from that relied upon by the Superior Court.⁵

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

⁵ *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995).