IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALONZO MORRIS,

Defendant BelowAppellant,

v.

S Court Below—Superior Court
of the State of Delaware,
STATE OF DELAWARE,
STATE OF DELAWARE,
Plaintiff Below
S Cr. ID 9911000751

Submitted: January 23, 2014 Decided: February 6, 2014

§

Before HOLLAND, JACOBS, and RIDGELY, Justices.

Appellee.

ORDER

This 6th day of February 2014, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

- (1) The appellant, Alonzo Morris, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Morris' opening brief that his appeal is without merit. We agree and affirm.
- (2) The record reflects that, following a retrial in 2002, a Superior Court jury found Morris guilty of Assault in the First Degree and Possession of a Deadly

¹ This Court vacated Morris' convictions on direct appeal following his first trial. *See Morris v. State*, 795 A.2d 653 (Del. 2002).

Weapon During the Commission of a Felony. On the weapon conviction, the Superior Court sentenced Morris to a total period of twenty years at Level V incarceration with credit for time previously served. On the assault conviction, the Superior Court sentenced Morris to ten years at Level V incarceration, suspended after serving seven years in prison for six months at Level IV Work Release, followed by two years and six months at Level III probation. We affirmed his convictions and sentences on appeal.²

- (3) Since that time, Morris has filed three motions for postconviction relief, a petition for a writ of mandamus, and a motion for a writ of coram nobis. All of these petitions were unsuccessful. On August 22, 2013, Morris filed a motion for correction of sentence, asserting that his sentence was imposed in an illegal manner because the Superior Court improperly relied upon his weapon conviction as the lead offense in order to justify an enhancement of his sentence under the SENTAC guidelines. The Superior Court denied Morris' motion. This appeal followed.
- (4) In his opening brief on appeal, Morris contends that the Superior Court's improper enhancement of his sentence in violation of the SENTAC guidelines constitutes "extraordinary circumstances" under Superior Court Criminal Rule 35(b) to justify his untimely motion below. We disagree.

² Morris v. State, 2004 WL 439881 (Del. Mar. 3, 2004).

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- (5) Pursuant to Superior Court Criminal Rule 35(a), a motion to correct a sentence imposed in an illegal manner is subject to the time limitation for filing a motion for reduction of sentence under Rule 35(b),³ which provides that a motion for reduction of sentence must be filed within 90 days of sentencing.⁴ The Superior Court will consider a defendant's motion filed more than 90 days after sentencing "only in extraordinary circumstances."⁵
- (6) Morris' petition failed to establish extraordinary circumstances. In the first instance, the Superior Court did not commit any error in treating his weapon conviction, the more serious of his felony convictions, as the lead offense for sentencing purposes. More importantly, the SENTAC guidelines are presumptive only. There is no basis to challenge the legality of a sentence solely on the grounds that a sentence exceeds the SENTAC guidelines. Such a claim does not establish "extraordinary circumstances" to overcome the 90 day limitation period of Rule 35(b).

³ Superior Court Criminal Rule 35(a) provides, "The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence."

⁴ Super. Ct. Crim. R. 35(b) (2014).

⁵ *Id*.

⁶ At the time of his sentencing, Assault in the First Degree was a Class C felony, while Possession of a Deadly Weapon During the Commission of a Felony was a Class B felony, subject to a more serious range of sentences. *Compare* DEL. CODE ANN. tit. 11, § 613(c) (1999) *with* DEL. CODE ANN. tit. 11, § 1447(a) (1999).

⁷ Mayes v. State, 604 A.2d 839, 845 (Del. 1992).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice