



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	§	
	§	No. 52, 2014
Plaintiff-Below,	§	
Appellee/Cross Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in
v.	§	and for Sussex County
	§	
JEFFREY W. BARNES,	§	C.A. NO. S14M-01-002 THG
	§	
Defendant-Below,	§	
Appellant/Cross-Appellee.	§	

Submitted: November 12, 2014  
Decided: November 13, 2014

Before **STRINE**, Chief Justice; **RIDGELY** and **VALIHURA**, Justices.

**ORDER**

This appeal arises in a confusing procedural context, as the Superior Court was asked to act under Superior Court *Criminal* Rule 35 and to issue a *civil* Writ of Mandamus. Although the issue is not free from doubt because of the unusual procedural context, we believe that the State is entitled to maintain its cross-appeal under 10 *Del. C.* § 9902(e)<sup>1</sup> because its cross-

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<sup>1</sup> “The State shall have an absolute right to appeal to an appellate court any ruling of a lower court on a question of law or procedure adverse to the State in any case in which the accused was convicted and appeals from the judgment, except that the decision or result of the State’s appeal shall not affect the rights of the accused unless the accused, on his or her appeal, is awarded a new trial or a new sentencing hearing. Once the State perfects its cross-appeal, the appellate court shall review and rule upon the questions

appeal asserts that the Superior Court erred in denying its motion to correct an illegal sentence and that motion in essence challenged the underlying judgment of conviction. Although defendant Barnes's appeal is ambiguous as to which order it challenges, it involves the same issue, and in challenging the grant of mandamus, it also contested the legality of the original judgment of conviction. And because the substantive issue the State raises – whether a felony DUI offense is covered by the Truth In Sentencing Act – is very important, this is a fitting matter for review under 10 *Del. C.* § 9903.<sup>2</sup>

Indeed, the substantive issue is important enough that it should be addressed *en banc* after full briefing on the merits. As the parties know, the original briefing on the central question was truncated because of the understandable uncertainty whether that question should be addressed in a case that no longer affects the interests of defendant Barnes.<sup>3</sup> The Public Defender is hereby appointed to take the other side of the central issue, even

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presented therein regardless of the disposition of the defendant's appeal." 10 *Del. C.* § 9902(e).

<sup>2</sup> "The State may apply to the appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of the appeal; but, in no event of such appeals shall the decision or result of the appeal affect the rights of the defendant and he or she shall not be obligated to defend the appeal, but the court may require the Public Defender of this State to defend the appeal and to argue the cause." 10 *Del. C.* § 9903.

<sup>3</sup> We are not aware of any practical effect on Barnes from changing the designation of his felony DUI conviction from "non-TIS" to "TIS," and, at argument, both parties agreed that Barnes' legal rights would not be affected by the outcome of this case.

though the outcome no longer affects defendant Barnes, because it is best positioned to provide us with quality briefs on the central issue in light of its expertise in this area. Because this issue is of importance to other important criminal justice entities, such as the Board of Parole and SENTAC, the Public Defender should reach out to them for information and input, so that the briefing from the Public Defender reflects the long-standing policies and positions of these entities.

In light of the importance of these issues and the burden of submitting new briefs, the Department of Justice and Office of Public Defender may confer and negotiate a mutually acceptable schedule for the filing of briefs that allows them the time they believe adequate. IT IS SO ORDERED.

BY THE COURT:

/s/ Leo E. Strine, Jr.

Chief Justice