IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTIN E. FOUNTAIN,	)	
	)	
Defendant Below-Appellant,	)	No. 315, 2015
	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE'S ANSWERING BRIEF

John Williams
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Bar I.D. # 365

DATE: January 21, 2016

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STATUTES AND OTHER AUTHORITIES

NATURE AND STAGE OF THE PROCEEDINGS

The State of Delaware generally adopts the statement of the procedural posture of this appeal as set forth in the Statement of Interest and Statement of Facts contained in the October 30, 2015 Opening Brief of Amicus Curiae. This is the State's Answering Brief in opposition to the position of Appellant and Amicus Curiae.

SUMMARY OF ARGUMENT

I. DENIED. The bright line and long standing Delaware rule is that unless a legislative change contains an express statement that it is intended to have retroactive application, the statutory alteration operates prospectively only. The 2014 legislative amendment of 11 Del. C. § 3901(d) to permit discretionary concurrent sentencing of criminal defendants contains no expression of an intended retroactive application. Accordingly, House Bill 312 operates prospectively only, and Martin E. Fountain is entitled to no resentencing consideration of his 2003 concurrent sentences of confinement.

II. DENIED. Any attempt to apply the 2014 amendment of 11 Del. C. § 3901(d) to sentenced inmates committing crimes prior to the July 9, 2014 effective date of House Bill 312 is a violation of the separation of powers doctrine. The Legislature may not act even indirectly to alter a previously imposed sentence of confinement decreed by an officer of the judicial branch. Furthermore, the Legislature has no power to commute or pardon a criminal sentence since that authority is the sole province of the State executive branch of government.

STATEMENT OF FACTS

On direct appeal in 2004, this Court found the following operative facts in the criminal prosecution of Martin E. Fountain:

> 2) On September 9, 2002, Dover Police Officers were conducting video surveillance of South New Street, a known open air drug market. Detectives Jason Pires and David Boney used a video camera mounted approximately 200-250 feet from where Fountain was doing business. The detectives saw Fountain make two apparent drug deliveries within ten minutes. In both incidents, a man handed something to Fountain, who put it in his right front pants pocket. Then Fountain spit several small objects out of his mouth into his hand, gave one of the objects to the man, and replaced the remaining objects in his mouth.
>
> 3) Immediately after the first transaction, Pires and Boney contacted a third detective, Jeffrey B. Matthews, who was patrolling nearby. They told Matthews where the unknown man was heading, but Matthews was unable to locate him. In the second transaction, the man, later identified as Howard Snipes, placed the object he received from Fountain in his left front pants pocket. Pires and Boney again contacted Matthews, who stopped Snipes as he came around the corner from South New Street to West Division Street. Matthews found a packet of crack cocaine, and nothing else, in Snipes' left front pants pocket. The officers arrested Fountain approximately 10-15 minutes after Snipes, but found no cocaine. Fountain did have $68 in cash and $30 in Food Stamp coupons in his right front pants pocket.

Fountain v. State, 2004 WL 1965196 at * 1 (Del. Aug. 18, 2004)(ORDER).

I. THE 2014 AMENDMENT OF 11 DEL C. § 3901(d) IS NOT RETROACTIVE

QUESTION PRESENTED

Is an amendatory statute containing no express language as to its' application retroactive?

STANDARD AND SCOPE OF REVIEW

There is de novo appellate review of questions of statutory interpretation. See Gibbs v. State, ____ A.3d ____, 2015 WL 7758484, at * 2 (Del. Dec.1, 2015); State v. Barnes, 116 A.3d 883, 888 (Del. 2015); Williams v. State, 756 A.2d 349, 351 (Del. 2000) ("This Court reviews de novo the Superior Court's construction of a statute.").

MERITS OF ARGUMENT

When defendant Martin E. Fountain was sentenced on September 10, 2003 for his nine Kent County Superior Court jury convictions, 11 Del. C. § 3901(d) provided: "No sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant." In 1976, the Delaware Legislature eliminated "concurrent sentencing entirely." Davis v. State, 400 A.2d 292, 295 & n. 2 (Del. 1979). See 60 Del. Laws c. 308; Burton v. State, 426 A.2d 829, 835-36 & n. 7 (Del. 1981). Effective July 9, 2014, 11 Del. C. § 3901(d) was amended, and

now states: "The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant."

House Bill No. 312 containing this 2014 amendment of 11 Del. C. § 3901(d) is at Tab 6 of the October 30, 2015 Compendium of Selected Authority filed by amicus curiae in this appeal. The synopsis of H. B. 312 states: "This bill restores judicial discretion to permit the imposition of either concurrent or consecutive sentences, bringing Delaware in line with the other 49 states and the federal government." 79 Del. Laws c. 297 (2014). Nothing in the express language of the 2014 amendment or the synopsis indicates that the legislative change is intended to be retroactive to inmates, like Martin E. Fountain, who were sentenced prior to the July 9, 2014 effective date of the legislative change.

On March 17, 2015, Fountain filed a pro se motion in the Superior Court requesting review of his 2003 sentences in light of House Bill No. 312. (AC31-47). The State filed a response on April 28, 2015 (AC11), and the Superior Court on April 29, 2015 denied Fountain's sentence review motion. (AC48). Next, Fountain on May 12, 2015 filed a pro se Motion to Arrest Judgment (AC49-68), and the Superior Court denied this second pro se motion on May 21, 2015. (AC69).

Fountain filed a pro se appeal to this Court from the Superior Court's May

21, 2015 Order (AC70-73), and on June 19, 2015 submitted a pro se Opening Brief in this appeal. (AC74-80). Pursuant to Del. Supr. Ct. R. 25(a), the State on June 23, 2015 filed a Motion to Affirm. (AC81-203). By Order of August 3, 2015, this Court denied the State's Motion to Affirm and appointed amicus curiae "to assist the Court in resolving the question raised in this appeal, which has resulted in conflicting outcomes in the Superior Court." (AC204-05).

In footnote 1 of the August 3, 2015 Order, this Court pointed out that the Kent County Superior Court on January 30, 2015 in State v. Michael Benson, Cr. ID 9708021684, had granted a defense resentencing motion based upon the 2014 amendment of 11 Del. C. § 3901(d), and resentenced "the defendant to concurrent terms of imprisonment." (AC204). The January 30, 2015 Superior Court transcript of Judge Young's resentencing of Michael A. Benson in ID 9708021684 is contained at Tab 1 of the October 30, 2015 Compendium of Selected Authority filed by amicus curiae in this appeal.

A. BENSON IS AN OUTLIER

Kent Superior Court Judge Young's granting a concurrent resentencing of Michael A. Benson's five separate 1998 fifteen year mandatory drug sentences into a single fifteen year mandatory sentence is an isolated departure from how other similar Superior Court motions seeking a concurrent resentencing under the 2014 legislative amendment referred to as House Bill No. 312 have been treated. At least

10 other Superior Court rulings on the same contention reach a different result than Benson. See State v. Coleman, 2015 WL 1331671, at * 1 (Del. Super. Mar. 18, 2015) (Johnston, J.) ("The Court finds that Section 3901(d) as amended, was not intended by the Delaware General Assembly to have retroactive effect."); State v. Desmond, 2014 WL 7009341, at * 1 (Del. Super. Dec. 2, 2014) (Cooch, R. J.) ("This Court finds that Section 3901(d), as amended does not have retroactive effect."); State v. Priest, 2014 WL 5003419, at * 1 (Del. Super. Oct. 6, 2014) (Cooch, R. J.); State v. Perkins, 2014 WL 4179882, at * 1 (Del. Super. Aug. 21, 2014) (Johnston, J.); State v. Jennings, 2014 WL 3943089, at * 1 (Del. Super. Aug. 11, 2014) (Vaughn, P. J.) ("Pursuant to Delaware case law, there is a presumption that a statute will not be applied retroactively unless the statute clearly contains express language indicating that the legislature intended a retroactive application."); State v. Coverdale, 2014 WL 4243631, at * 2 & n. 17 (Del. Super. Aug. 11, 2014) (Wallace, J.). See also State v. Henry, ID 06009021733 and 0610025087 (Del. Super. June 22, 2015) (Graves, R. J.) (B-5); State v. Fisher, ID 1110018244 (Del. Super. June 8, 2015) (Young, J.) (B-4); State v. Ingram, ID 0305008270 (Del. Super. May 5, 2015) (Young, J.) (B-3); State v. Scott, ID 1104005474 (Del. Super. Apr. 2, 2015) (Davis, J.) (B-1-2).

When Superior Court Resident Judge Witham's May 21, 2015 Order in State v. Fountain, ID 0209005514 (Del. Super. May 21, 2015) (AC 69) being appealed

here is included in the list, there are at least 11 Superior Court decisions since August 2014 that have not found the 2014 amendment of 11 Del. C. § 3901(d) in House Bill No. 312 to be retroactive to an inmate sentenced prior to the July 9, 2014 effective date of that legislation. Oddly, while granting a concurrent resentencing to Michael A. Benson on January 30, 2015 (Tab 1 of October 30, 2015 Compendium), Kent County Superior Court Judge Young in two later Orders in Norman Ingram on May 5, 2015 (B-3), and Wesley J. Fisher on June 8, 2015 (B-4) denied defense motions for Resentencing under House Bill 312.

In Lewis v. State, 2015 WL 4606521, at * 2 (Del. July 30, 2015), this Court considered a plain error claim in the context of a Rule 26(c) Brief that Alfred Lewis who pled guilty on June 4, 2014 to two counts of promoting prison contraband should have been sentenced on August 29, 2014 under the amended version of 11 Del. C. § 3901(d), that became effective July 9, 2014. This Court in Lewis found no plain error, and stated: "Lewis was properly sentenced under the version of Section 3901(d) in effect on November 21, 2013, the date of the offenses." Lewis, supra at * 2. At footnote 10 in Lewis, this Court in 2015 cited the prior decisions in Ingram v. State, 2014 WL 7010667, at * 1 (Del. Dec. 9, 2014), and Lopez v. State, 2014 WL 4898213, at * 2 (Del. Sept. 29, 2014), that June 30, 2003 changes in the State drug laws referred to as House Bill 210 do not entitle the drug defendants to a resentencing under new more lenient laws enacted after the crimes occurred.

Lewis, Ingram and Lopez are all recognitions by this Court that the general rule is that a defendant must be sentenced under the law in effect on the date of the offense and that a defendant is not entitled to the benefit of any amendatory change in the sentencing law occurring after the date of the offense unless the amending legislation specifically provides for a retroactive application. See State v. Ismaaeel, 840 A.2d 644, 651-52 (Del. Super. 2004), aff'd, 2004 WL 1587040 (Del. June 25, 2004); Seeney v. State, 2004 WL 2297394, at * 1 (Del. Oct. 7, 2004); Dahms v. State, 2004 WL 1874650, at * 1 (Del. Aug. 17, 2004); Johnson v. State, 2004 WL 1656501, at * 2 (Del. July 20, 2004); State v. Brown, 2004 WL 1195364, at * 1 (Del. Super. Apr. 27, 2004). See also Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 661 (1974) ("the saving clause has been held to bar application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.").

In contrast to the substantial weight of this conflicting authority, the January 30, 2015 bench ruling in Michael A. Benson is an aberration and an outlier. It is also in conflict with Judge Young's later consideration and rejection of two similar motions in Norman Ingram on May 5, 2015 (B-3), and Wesley J. Fisher on June 8, 2015. (B-4). The decision in Michael A. Benson is incorrect, and the inmate received a windfall of a 60 year reduction in his Level V prison sentence.

The January 30, 2015 resentencing of Michael A. Benson at 10:09 A. M.

while conducted in open court appears to have been done in the absence of any representative from the Delaware Attorney General's office. The first page of the January 30, 2015 resentencing transcript identifies Kathleen K. Amalfitano, Esquire as "appearing on behalf of the State"; however, attorney Amalfitano is an Assistant Public Defender in Kent County, not a Deputy Attorney General representing the State of Delaware. The 4 page Benson transcript does not disclose that anyone other than Benson, his defense counsel (Amalfitano), Judge Young, and court personnel were present at the brief January 30, 2015 resentencing. Why Judge Young would resentence Benson and later deny similar requests by Ingram (B-3), and Fisher (B-4) is not apparent.

The January 30, 2015 resentencing of Michael A. Benson was unauthorized by law and improper. Perhaps a subsequent recognition of this judicial error explains the different results in Ingram (B-3), and Fisher. (B-4). Benson is an outlier, and Martin Fountain's case is an opportunity to furnish trial courts with appropriate future guidance when presented with a resentencing request requiring a retroactive application of an amendatory legislative enactment.

B. AMICUS CURIAE ARGUMENT

Pursuant to this Court's August 3, 2015 Order, "Amicus curiae shall file a brief supporting the appellant's position that House Bill 312, which amended 11 Del. C. § 3901(d), permits a Judge the discretion to modify a sentence entered

before July 9, 2014 to reimpose concurrent terms of imprisonment." (AC204-05). In accordance with this August 3 Order, amicus curiae on October 30, 2015 filed an Opening Brief in this appeal supporting Martin E. Fountain's prior pro se argument that Judge Witham's May 21, 2015 Order denying a resentencing (AC69) should be reversed. Amicus curiae argues that application of 11 Del. C. § 3901(d), as amended on July 9, 2014, to prior criminal sentences is not barred by the Delaware Savings Statute [11 Del. C. § 211(b)], and is consistent with prior Delaware precedent permitting retroactive application of remedial or procedural statutes.

The State opposes this interpretation of the 2014 legislation known as House Bill 312, and asserts that it is contrary to the long standing bright line Delaware rule that in the absence of an express contrary declaration in the legislation, a ". . . Court will not infer an intention to make an act retrospective." Keller v. Wilson & Co., Inc., 190 A.115, 125 (Del. 1936) (citing Jones v. Wootten, 1832 WL 135, at * 4 (Del. Super. Fall Session 1832)). See also State v. Nixon, 46 A.2d 874, 875 (Del. Gen. Sess. 1946); Smith v. Clemson, 1880 WL 2700, at * 7 (Del. Super. Fall Session 1880) ("To give an act or statute a retrospective operation or action would be contrary to well-settled principles of law applicable to the construction of statutes, unless it be plainly and unmistakably so provided by the statute."); Cook v. Gray, 1862 WL 726, at * 12 (Del. Ct. Errors and Appls. June Term 1862) (repealing statute). "It is a general rule that statutes operate prospectively."

Comment, "Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation," 121 U. Pa. L. Rev. 120, 120 (1972). Compare S. David Mitchell, "In With the New, Out with the Old: Expanding the Scope of Retroactive Amelioration," 37 Am. J. Crim. L. 1, 7 (2009).

Initially, amicus curiae discusses the Delaware Savings Statute, 11 Del. C. § 211, and notes that subsection (a) applies to statutory repeals, while subsection (b) covers amendments. Since House Bill 312 in 2014 is an amendment, only 11 Del. C. § 211(b) might have application. Nonetheless, amicus curiae further reasons that § 211(b) is "facially inapplicable" to the 2014 amendment of 11 Del. C. § 3901(d) because House Bill 312 does not have the effect of terminating or barring a criminal prosecution. (Opening Brief of amicus curiae at p. 6). Not only is the Delaware Savings Statute inapplicable to Fountain's resentencing request, but amicus curiae points out that 11 Del. C. § 211 differs from the federal savings statute [1 U.S.C. § 109] because the latter provision addresses only repeals, not amendments. (Opening Brief at 12). Based on this repeal / amendment distinction, amicus curiae argues that reliance upon the federal savings statute and federal decisional law by the Delaware courts in State v. Ismaaeel, 840 A.2d 644 (Del. Super. 2004), aff'd, 2004 WL 1587040 (Del. June 25, 2004) is misplaced. (Opening Brief at 21).

A difficulty with the argument of amicus curiae and the attack upon the rationale of Ismaaeel is that whether or not 11 Del. C. § 211(b) has any application

to Fountain's resentencing request based upon House Bill 312, long standing Delaware case law is that where "There are no words in the Act expressly declaring it to be retroactive, . . . the presumption is to the contrary." State v. Nixon, 46 A.2d 874, 875 (Del. Gen. Sess. 1946). While amicus curiae attacks Ismaaeel for its citation of the federal savings statute [1 U.S.C. § 109] and federal case law, amicus does not address the earlier Delaware case law on the retroactivity issue, including the 1946 decision in State v. Nixon specifically quoted in Ismaaeel, 840 A.2d at 654.

Long before the 2004 Superior Court decision in Ismaaeel, the Delaware law has been that legislative enactments operate prospectively only unless a contrary legislative intent is expressly set forth in the enactment. The Legislature is presumed to know the existing law. See State v. Botluck, 200 A.2d 424, 427 (Del. 1964); State v. Rodriguez, 1993 WL 189548, at * 10 (Del. Super. May 17, 1993); State v. Barshay, 364 A.2d 830, 832 (Del. Super. 1976); State v. 0.0673 Acres of Land, 224 A.2d 598, 602 (Del. 1966). A pertinent separation of powers concern in the interpretation of the 2014 legislation covering 11 Del. C. § 3901(d) is that once the legislature has determined the penalty for a criminal offense it thereafter lacks the Executive authority to grant clemency or a pardon to a sentenced inmate. See 121 U. Pa. L. Rev. at 146. When the Delaware criminal sentencing procedure had a major overhaul in 1990 with the enactment of The Truth in Sentencing Act, this

Court found that the Delaware General Assembly never intended that comprehensive legislation to have a retroactive effect. Robinson v. State, 584 A.2d 1203, 1205 (Del. 1990). Similarly, no retroactive application intention can be divined from the 2014 legislative amendment of 11 Del. C. § 3901(d) in House Bill 312.

Delaware has long utilized a bright line rule for determining retroactivity of legislation. Unless the legislation contains a clear expression that it is intended to have retroactive effect, it has only prospective application. See Nixon, 46 A.2d at 875. Amicus curiae offers no compelling reason to depart from this long established and easily applied rule and adapt the more amorphous standard of first determining if the legislative change may be deemed remedial or a "reform." (See Opening Brief at 17-19). Furthermore, a substantial number of prison inmates sentenced prior to July 9, 2014 and currently serving consecutive sentences of confinement will now have the right to seek resentencing consideration, as Fountain and nearly a dozen other prisoners have already done, if House Bill 312 is given retroactive application. Sentencing judges may have to deal with numerous resentencing motions in cases decided many years ago, and if actual court resentencing hearings are conducted, crime victims will have a right under 11 Del. C. § 9407 to notice of and the right to be present at any such court hearing.

II. TRIAL JUDGES HAVE NO DISCETION TO IMPOSE CONCURRENT SENTENCES FOR CRIMES COMMITTED PRIOR TO THE 2014 LEGISLATIVE CHANGE

QUESTION PRESENTED

Is determining that a legislative amendment may have a remedial purpose a basis for retroactive application of the legislative change?

STANDARD AND SCOPE OF REVIEW

There is de novo appellate review of questions of statutory interpretation. See Mott v. State, 49 A.3d 1186, 1188 (Del. 2012); Arnold v. State, 49 A.3d 1180, 1183 (Del. 2012).

MERITS OF ARGUMENT

Even though House Bill 312 contains no express statement that it is intended to have retroactive effect, amicus curiae in Argument II of the October 30, 2015 Opening Brief claims that the Delaware Legislature intended the 2014 act to be retroactive. (Opening Brief of Amicus Curiae at p. 27). According to amicus curiae, "Prohibiting judges from imposing concurrent sentences for crimes committed and sentences imposed prior to July 9, 2014 would therefore directly contravene the General Assembly's aims in enacting the Amended Sentencing Act and similar laws that contribute to Delaware's sentencing reform effort." (Opening Brief at 27). Likewise, amicus curiae argues, "The General Assembly's goals are

best served by giving the Amended Sentencing Act retroactive effect." (Opening Brief at 31). While amicus curiae makes these broad assertions about what the Delaware General Assembly "reasonably intended" in the 2014 amendment of 11 Del. C. § 3901(d), amicus does not answer the simple question of why if this is what the Legislature truly intended to do, the Legislature simply did not say its enactment shall have retroactive effect to any inmate currently serving a concurrent sentence of confinement?

There are at least 4 possible answers to this fundamental question. First, the omission of an express retroactivity statement was a legislative drafting oversight. Second, although the Legislature is presumed to know the contrary existing law [See State v. Barshay, 364 A.2d 830, 832 (Del. Super. 1976); State v. Botluck, 200 A.2d 424, 427 (Del. 1964)], the Legislature ignored this presumption and hoped the legislation would, nonetheless, be accorded retroactive application. Third, the Legislature knew or should have known that under the separation of powers doctrine it lacked authority to alter or authorize another branch of the State government to alter a previously imposed criminal sentence. Finally, the Legislature simply had no retroactive application intention.

Of the four possible answers to why the General Assembly set forth no express statement of retroactive application of House Bill 312 in 2014, the separation of powers limitation appears to be the most reasonable response. That is,

the Delaware General Assembly in enacting House Bill 312 included no language attempting to make the amendment of 11 Del. C. § 3901(d) retroactive to sentenced inmates like Martin E. Fountain because the legislative body knew or should have known that it had no authority either directly or indirectly (by enabling the judiciary) to change a sentenced inmate's decried sentence of confinement. See In re Kline, 70 N. E. 511, 512 (Ohio 1904) ("The Legislature cannot intervene and vacate the judgment of the courts, either directly or indirectly by repeal of a statute under which the judgment was rendered because that would be an exercise of judicial, and not of legislative power."). Furthermore, the separation of powers doctrine prohibits the legislature from encroaching upon the executive branch's exclusive authority to commute sentences or grant pardons. See Comment, "Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation," 121 U. Pa. L. Rev. 120, 146 (1972) (". . . the legislature constitutionally lacks the power to grant pardons or clemency and that any legislative reduction or extinguishment of penalty would be in the nature of a pardon or clemency.").

As one legal commentator observed here, "No matter what the nature of the change, ameliorative legislation has never been held to apply to finalized convictions." 121 U. Pa. L. Rev. at 145. This Court has previously recognized this limitation in not applying the Truth in Sentencing Act retroactively. See Robison v.

State, 584 A.2d 1203, 1205 (Del. 1990). Likewise, this Court has not applied the 2003 amendment of the Delaware drug laws retroactively. See Seeney v. State, 2004 WL 2297394, at * 1 (Del. Oct. 7, 2004); Dahms v. State, 2004 WL 1874650, at * 1 (Del. Aug. 17, 2004). See also Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 661 (1974) ("the saving clause has been held to bar application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.").

"The Doctrine of Separation of Powers is a rule forbidding one branch of government from exercising powers exclusively assigned to another, and forbidding one branch of government from allowing its powers to be exercised by another branch." Opinion of the Justices, 380 A.2d 109, 113 (Del. 1977). See also State v. Sturgis, 947 A.2d 1087, 1090 (Del. 2008) (", , , one department may not encroach on the field of either of the others."); Evans v. State, 872 A.2d 539, 547-48 (Del. 2005); Brennan v. Black, 104 A.2d 777, 781 (Del. 1954). The Legislature may define what is a crime, affix a sentence, and assign a court jurisdiction . Sturgis, 947 A.2d at 1090. Once the judiciary sentences a criminal defendant, that determination has res judicata effect. The Legislature cannot thereafter attempt to alter the sentence imposed either directly or indirectly by attempting to authorize the judiciary to resentence a convicted and sentenced defendant. Although the Executive branch may grant clemency by commuting a sentence or issuing a

pardon, that power resides with the Executive and may not be usurped by the Legislature.

". . . [T]he doctrine of separation of powers is integral to the fabric of the Delaware Constitution." Joseph v. C.C. Oliphant Roofing Co., 711 A.2d 805, 808 (Del. Super. 1997) (quoted in Evans, 872 A.2d at 547). The Legislature cannot reverse the judicial determination in a particular case, although it may enact a new rule for future cases. Evans, 872 A.2d at 548 (quoting Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 222 (1995)). Applying these general principles associated with the separation of powers doctrine, all the Delaware Legislature could do in House Bill 312 was grant trial judges in the judicial branch of government discretionary authority to determine if sentences of confinement imposed for crimes committed after the July 9, 2014 effective date of the amendment of 11 Del. C. § 3901(d) would run concurrently or consecutively. Regardless of the legislative impetus for the 2014 amendment or whether the enactment is viewed as remedial in nature, the Legislature's power in this realm may only be exercised prospectively. Martin E. Fountain's pro se motion to be resentenced under House Bill 312 was properly denied. (AC69).

CONCLUSION

The judgment of the Superior Court denying resentencing should be affirmed.

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Bar I.D. # 365

Dated: January 21, 2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTIN E. FOUNTAIN,	)	
	)	
Defendant Below-	)	**No. 315, 2015**
Appellant,	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-	)	
Appellee.	)	

AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 21st day of January 2016, personally appeared before me, a Notary Public, in and for the County and State aforesaid, Mary T. Corkell, known to me personally to be such, who after being duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice, 102 West Water Street, Dover, Delaware.

(2) That on January 21, 2016, she did electronically serve the attached State's Answering Brief properly addressed to:

William M. Lafferty, Esquire
Susan Wood Waesco, Esquire
Shaun M. Kelly, Esquire
Richard Li, Esquire
Glenn R. McGillivray, Esquire
Morris, Nichols, Arsht & Tunnell, LLP
1201 N. Market Street
Wilmington, DE 19801

(3) That on January 21, 2016, she did deposit in the State Mail two copies of the attached State's Answering Brief properly addressed to:

Martin E. Fountain, SBI #256660
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977 SLC N440

Mary T. Corkell

Mary T. Corkell

SWORN TO and subscribed
Before me the day aforesaid.

Janice R. Malmberg

Notary Public