

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY SMITH,	§
	§ No. 148, 2026
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 2405006443 (N)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: August 4, 2026
Decided: August 27, 2026

Before **SEITZ**, Chief Justice; **TRAYNOR** and **LEGROW**, Justices.

ORDER

Upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Jeffrey Smith, filed this appeal from the Superior Court’s denial of his motion for sentence modification. The State has moved to affirm the judgment below 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) Smith pleaded no contest to the class D felony of second-degree sexual abuse of a child by a person in a position of trust (“Sexual Abuse”) and to the class F felony of second-degree unlawful sexual contact (“Unlawful Sexual Contact”). Smith and the State agreed to recommend the following sentence: for Sexual Abuse,

eight years of imprisonment, suspended after three years for decreasing levels of supervision; and for Unlawful Sexual Contact, three years of imprisonment, suspended for eighteen months of probation. The Superior Court did not accept the parties' recommendation. The court sentenced Smith to six years of nonsuspended prison time for Sexual Abuse, rather than three, and one year of nonsuspended time for Unlawful Sexual Contact, rather than none.

(3) Smith filed, with the assistance of counsel, a motion for sentence modification. Smith asserted that the Sentencing Accountability Commission ("SENTAC") guidelines establish a presumptive sentence of up to two years for Sexual Abuse and up to nine months for Unlawful Sexual Contact.¹ He argued that the Superior Court misapplied aggravating circumstances to support an excessive upward departure from the sentencing guidelines and gave insufficient weight to mitigating circumstances. The Superior Court denied the motion, and this appeal followed.

(4) We review the denial of a motion for sentence modification for abuse of discretion.² This Court's review of sentences that are within statutory limits is "extremely limited."³ A sentencing court abuses its discretion when the sentence is

¹ SENTAC Benchbook 2025, at 57, 59, 70 available at [https://cjc.delaware.gov/wp-content/uploads/sites/](https://cjc.delaware.gov/wp-content/uploads/sites/61/2025/06/Bench-Book-2025-Final.pdf)

61/2025/06/Bench-Book-2025-Final.pdf.

² *Gladden v. State*, 2020 WL 773290, at *1 (Del. Feb. 17, 2020).

³ *Cooling v. State*, 2023 WL 8278529, at *2 (Del. Nov. 30, 2023).

based on factual predicates that are false, impermissible, or lack minimal reliability; judicial vindictiveness or bias; or a closed mind.⁴ A sentencing judge has broad discretion to consider information pertaining to a defendant’s personal history and behavior that is not confined exclusively to the conduct for which the defendant was convicted.⁵ Moreover, this Court has “repeatedly held” that the “Superior Court’s failure to follow the nonbinding SENTAC guidelines, or to state its reasons for not following the guidelines, is simply no basis for appeal.”⁶ The Superior Court has “near-complete discretion as to whether to follow the SENTAC guidelines.”⁷

(5) In this appeal, Smith first argues that the Superior Court erroneously applied “undue depreciation of offense” as an aggravating factor. Relying on the SENTAC Benchbook’s statement that undue depreciation applies if “[i]t would unduly depreciate the seriousness of the offense to impose a sentence of *other than total confinement*,”⁸ Smith contends that this aggravating factor does not apply if, as for Sexual Abuse and Unlawful Sexual Contact, the presumptive sentence includes Level V time. But even if Smith is correct that the “undue depreciation” aggravating factor explicitly identified in the Benchbook refers only to presumptive sentences that do not include Level V time, the sentencing guidelines do not preclude the

⁴ *Id.*

⁵ *Wallace v. State*, 2024 WL 3874151, at *5 (Del. Aug. 20, 2024).

⁶ *Id.* (internal quotations omitted).

⁷ *Anderson v. State*, 2025 WL 2993469, at *3 (Del. Oct. 24, 2025).

⁸ Benchbook, *supra* note 1, at 123 (emphasis added).

Superior Court from determining that imposing the presumptive period of incarceration would unduly depreciate the seriousness of an offense. The SENTAC aggravating and mitigating circumstances are “provided as examples and are not intended to be exclusive reasons for departure.”⁹ Thus, we conclude that the Superior Court acted within the scope of its “near-complete discretion”¹⁰ when determining that Smith should be sentenced to more than the presumptive sentence.

(6) Second, Smith argues that the Superior Court erroneously applied “need for correctional treatment” as an aggravating factor, because the presumptive sentence of two years and nine months for the two crimes—or the three-year sentence recommended in the plea agreement—would be sufficient for Smith to complete a sex-offender treatment program while incarcerated. The Superior Court stated that it took into account the amount of time served and good time credits in determining whether the recommended sentence was sufficient to meet Smith’s need for treatment at Level V and for punishment. We find no abuse of discretion as to this issue.

(7) Third, Smith contends that lack of remorse alone could not support sentencing aggravation of the magnitude imposed by the court, particularly when balanced by the mitigating factors that the court recognized. Because the Superior

⁹ *Id.* at 121.

¹⁰ *Anderson*, 2025 WL 2993469, at *3.

Court appropriately found several aggravating factors and weighed those factors against the mitigating factors in an exercise of its sentencing discretion, this argument does not provide a basis for reversal.

(8) Finally, Smith challenges the court’s finding that he posed a continuing threat to the victim. He emphasizes that the underlying conduct occurred in 2012 and 2013; states that Smith’s psychoforensic evaluation was contrary to the conclusion that Smith was a continuing threat to the victim; and asserts that there was no factual support for the court’s finding that Smith’s positive achievements and community service were insincere or a façade for his crimes. Smith also argues that the court erroneously found that Smith engaged in “uncharged misconduct”—threatening the victim’s financial support and resources if he reported the crimes—that Smith did not admit.

(9) As to the latter point, the court asked defense counsel to comment on whether Smith had made the alleged statements, and Smith had an opportunity to—and did—address the court in allocution. The fact that Smith elected not to address the allegations about the financial threats does not render the court’s finding erroneous. Moreover, the characterization of the issue as “uncharged misconduct” does not establish a basis for reversal. As to the court’s finding more generally, the sentencing court has broad discretion to consider information pertaining to a defendant’s personal history and behavior which is not confined exclusively to

conduct for which that defendant was convicted.¹¹ The Superior Court carefully considered the information presented—including the parties’ recommended sentence, the presentence report, the victim’s written statement, the psychological report, numerous character letters, and the appellant’s statements at sentencing—and made a sentencing determination based on that information. Smith’s disagreement with the court’s conclusions does not establish reversible error.

NOW, THEREFORE, IT IS ORDERED that the Motion to Affirm is GRANTED and the judgment of the Superior Court be AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor

Justice

¹¹ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).