

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH R. MATTERS,	§
	§
Defendant Below-	§ No. 482, 1999
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN96-12-0577
Plaintiff Below-	§ IN96-12-0579
Appellee.	§ IN96-12-0503

Submitted: June 22, 2000
Decided: August 30, 2000
Corrected: August 31, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 30th day of August 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Joseph R. Matters, filed this appeal from an order of the Superior Court denying his motion for reduction of sentence pursuant to Superior Court Criminal Rule 35. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Matters claims his sentence should be reduced because: first, the sentence was in violation of the SENTAC guidelines; second, his juvenile record should not have been considered; third, the Court violated his constitutional rights by denying his requests for transcripts; and, fourth, the

State breached the plea agreement by recommending that he be sentenced to 29 years in prison rather than 10.

(3) In June 1998, Matters was indicted on numerous charges including kidnaping, unlawful sexual penetration, assault, robbery, unlawful sexual contact and two counts of possession of a deadly weapon during the commission of a felony. In accordance with a plea agreement with the State, Matters pleaded guilty to kidnaping in the first degree, assault in the second degree and unlawful sexual contact in the third degree. The plea agreement also provided that the State would recommend a sentence of 10 years incarceration provided Matters had no out-of-state criminal record. Matters conceded that he had a prior juvenile out-of-state criminal history and the State recommended a sentence of 29 years incarceration at Level V. Matters was sentenced to 18 years incarceration at Level V, to be suspended after 15 years for decreasing levels of probation.

(4) Matters did not file a direct appeal from his convictions or sentences. He filed two motions for reduction of sentence, the first in December 1998 and the second in August 1999. Following the Superior Court's denial of his August 1999 motion, he filed a motion in the Superior Court in October 1999 requesting copies of transcripts of his plea hearing and his sentencing

hearing. Matters also appeals from the Superior Court's denial of his October 1999 motion.

(5) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." "The 'narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.'"¹ "Relief under Rule 35(a) is available 'when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy Clause'"² "A sentence is also illegal if it 'is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.'"³

(6) Matters does not contend that his sentences exceeded the statutorily-imposed limits, constituted double jeopardy, or were ambiguous or contradictory. All of his contentions regarding his sentences implicate the

¹*Brittingham v. State*, Del. Supr., 705 A.2d 577, 578 (1998) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).

²*Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4th Cir. 1992)).

³*Id.* (quoting *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir. 1997)).

proceedings leading up to the imposition of the sentences. As such, he is not entitled to relief pursuant to Rule 35(a).

(7) Even if viewed on their merits, Matters' claims regarding his sentences are unavailing. First, the SENTAC guidelines are voluntary and non-binding.⁴ Second, the Superior Court was within its discretion in considering Matters' juvenile record for purposes of sentencing.⁵ Finally, the record does not indicate any breach of the plea agreement by the State. The prosecutor agreed to recommend 10 years incarceration only if Matters had no out-of-state record, which he conceded he had. Moreover, the record reflects that Matters was represented by counsel at the time he signed the plea agreement and acknowledged by signing the agreement that he had not been promised a specific sentence. In the absence of clear and convincing evidence to the contrary, Matters is bound by the representations made on his signed guilty plea form.⁶

(8) Matters' claim that the Superior Court violated his constitutional rights by denying his request for the transcripts of his plea hearing and sentencing hearing is equally unavailing. Absent a showing that there is some legal or factual basis for relief and that there is a particularized need for the

⁴*Mayes v. State*, Del. Supr., 604 A.2d 839, 845 (1992).

⁵*Id.* at 843.

⁶*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

transcript, the Superior Court is within its discretion to deny a request for a transcript at State expense.⁷

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁷*Bratcher v. State*, Del. Supr., No. 331, 1998, Veasey, C.J., 1998 WL 984055 (Nov. 10, 1998) (ORDER).