

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO T. DRUMMOND	§	
	§	No. 468, 2004
Defendant Below,	§	
Appellant,	§	On Appeal from Superior Court
	§	of the State of Delaware
v.	§	in and for Sussex County
	§	Cr.A. Nos. VS02-02-0399-02
STATE OF DELAWARE,	§	and VS02-02-0400-02
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 23, 2005
Decided: March 28, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 28th day of March, 2005, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Antonio T. Drummond appeals the sentence he received after pleading guilty to a violation of probation. Drummond concedes that he violated the terms of his probation and that the sentence imposed was within statutory limits. His sole claim on appeal is that the trial court relied on demonstrably false information in determining his sentence.

(2) On July 22, 2002, Drummond pled guilty to two counts of assault in the second degree, resisting arrest, and possession of marijuana. He was sentenced to 12 years at Level V, suspended after one year, followed by 11 years

on probation. On April 1, 2004, Drummond was found guilty of violating probation after he was arrested on various criminal charges. The trial court revoked his probation and sentenced Drummond to seven years at Level V, suspended for six months at Level IV Home Confinement, followed by five years at Level III.

(3) At the end of May 2004, Drummond again violated the terms of his probation, this time by leaving his residence during curfew hours and by failing to maintain gainful employment. The police did not locate him until July 23, 2004, when Drummond was arrested and charged with trafficking in cocaine, distribution of cocaine to a minor, and possession with intent to deliver cocaine.

(4) At the September 2004 violation of probation hearing, Drummond admitted the curfew and employment violations, but contested the new criminal charges. The Superior Court sentenced Drummond to five years at Level V, with credit for 60 days served, and two years at Level V suspended for two years probation. During sentencing, the court noted that Drummond had been convicted of robbery in the first degree, assaults and drug charges. After learning that Drummond, who was 25 years old, had spent almost seven years in prison, the court observed:

You get out [of prison] and you can't stay out of trouble, it looks like. The aggravators are surely there. Repeated criminal conduct. You cannot stay out of trouble. You can't apparently handle probation.

(5) Drummond argues that the Superior Court relied on demonstrably false information when it sentenced him because Drummond had no first degree robbery conviction. He had been charged with first degree robbery, but pled guilty to second degree robbery. Since the robbery conviction was the most serious crime Drummond committed, he contends that the trial court's mistaken belief requires that he be resentenced.

(6) Our review of a sentence "generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature."¹ If a sentence is within statutory limits, this Court will find error only if it is clear that the sentence was "imposed on the basis of demonstrably false information or information lacking a minimal indicium of reliability."²

(7) The record establishes that the trial court did not impose its sentence on the basis of its mistaken belief that Drummond's robbery conviction was a first degree robbery instead of a second degree robbery. The trial court noted Drummond's repeated criminal behavior and his inability to stay out of trouble while on probation. Whether Drummond had been convicted of first degree robbery or second degree robbery, the trial court's conclusion that he had a

¹ *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

² *Mayes v. State*, 604 A.2d 839, 843 (Del. 1992).

history of repeated criminal conduct was not “demonstrably false” – it was accurate. Moreover, Drummond alerted the trial court to its mistake in his Motion for Modification. Since the court denied his motion after it had all the correct information as to Drummond’s criminal history, it is apparent that the court did not rely on the level of robbery conviction in imposing its sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

By the Court:

/s/ Carolyn Berger
Justice