

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS E. NORWOOD,	§
	§
Defendant Below-	§ No. 569, 2004
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0107006910
Plaintiff Below-	§
Appellee.	§

Submitted: April 29, 2005
Decided: June 27, 2005

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

ORDER

This 27th day of June 2005, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Thomas Norwood, filed this appeal from an order of the Superior Court, dated October 20, 2004, denying the Board of Parole's request for modification of Norwood's sentence pursuant to 11 Del. C. § 4217(e).¹ The Superior Court held that Norwood poses a substantial risk to the community because of his drug-dealing history. We

¹ Section 4217(e) provides in part, "Upon receipt of the recommendation of the Board of Parole, the [Superior Court] may in its discretion grant or deny the application for modification of sentence. . . ."

find no abuse of the Superior Court's discretion in this matter. Accordingly, we affirm.

(2) The record reflects that a Superior Court jury convicted Norwood in 2001 of twenty drug-related charges, including trafficking. The Superior Court sentenced Norwood on the lead trafficking offense to twenty years at Level V incarceration, suspended after serving six years for three years and nine months at decreasing levels of supervision. On the remaining nineteen charges, the Superior Court sentenced Norwood to a total period of six years at Level III three probation and twenty-five years at Level II probation. This Court affirmed Norwood's convictions and sentence on direct appeal.²

(3) On January 9, 2004, Norwood filed a motion seeking reduction of his sentence pursuant to Superior Court Criminal Rule 35(b). The Superior Court denied Norwood's motion on the ground that the sentence imposed in 2001 was reasonable and appropriate and Norwood had failed to establish "extraordinary circumstances"³ to justify a reduction of sentence. On September 20, 2004, the Board of Parole sent a letter notifying the Superior Court that the Board unanimously recommended that Norwood's

² *Norwood v. State*, 2003 WL 29969 (Del. Jan. 2, 2003)

³ DEL. SUPER. CT. CRIM. R. 35(b) (2005).

sentence be reduced. The Board's memorandum stated that the Department of Correction had filed a request for Norwood's sentence modification. The "good cause" to justify the Department's request was "prison overcrowding." The Board recommended that Norwood's sentence be modified by immediately suspending all Level V incarceration for completion of the Level IV Crest Program, followed by six months in work release, followed by eighteen months probation. The Superior Court, citing a lengthy list of Norwood's drug charges, noted that Norwood was not merely a consumer of drugs; he was a drug dealer. For that reason, the Superior Court concluded that Norwood continues to pose a substantial risk of danger to the community.

(4) In his opening brief on appeal, Norwood asserts that he was a first-time offender and that he has put his drug activity behind him. He contends that he has demonstrated through his participation in treatment and rehabilitation programs that he is no longer a risk to the community. Moreover, he asserts that he is being punished for having exercised his right to be tried by a jury. According to Norwood, if he had accepted the State's plea offer, which would have required him to plead guilty to three delivery charges, he would have been released by now. Norwood asserts that the

State's strong objection to his sentence reduction is based upon the number of charges (20) for which he ultimately was convicted.

(5) In response, the State contends that the Superior Court has broad discretion as to sentencing matters⁴ and that the Superior Court was not obligated to accept the Board of Parole's recommendation.⁵ The State points out that Norwood originally was sentenced to a twenty-year prison term that was to be suspended after serving only six years followed by more than thirty years of probationary supervision. The Board of Parole's recommendation, in essence, would have permitted Norwood's release after serving little more than the three-year minimum mandatory sentence for trafficking. The State acknowledges that reasonable people might disagree about Norwood's continued risk to the community. Nonetheless, the State argues that the Superior Court's rationale for denying the Board of Parole's recommendation, i.e., that Norwood was a drug dealer and not merely a drug user, was not an abuse of the trial court's broad discretion.

(6) We agree. This Court will overturn a trial court's discretionary ruling on appeal only if the decision is based on unreasonable or arbitrary

⁴ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁵ *Cf. Howington v. State*, 1987 WL 35857 (Del. Jan 16, 1987) ("A sentencing judge is under no obligation to sentence in accord with recommendations made by the State.").

grounds.⁶ Having carefully considered the parties' respective positions in this appeal, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated October 19, 2004. The Superior Court did not abuse its broad discretion in rejecting the Board of Parole's recommendation to reduce Norwood's sentence.

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

BY THE COURT:

/s/ Henry duPont Ridgely

Justice

⁶ *Zimmerman v. State*, 628 A.2d 62, 65 (Del. 1993).