

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
v.)	ID No. 0112005167
)	
JONATHAN S. JOHNSON,)	
)	
Defendant.)	

ORDER

This 6th day of November, 2019, upon consideration of Defendant Jonathan S. Johnson’s (“Defendant”) *pro se* Motion for Correction of Illegal Sentence (the “Motion”),¹ and the record in this case, **IT APPEARS THAT:**

1. Defendant was born on April 17, 1986, making him 15 years old on December 9, 2001 when he committed the relevant crimes for this Motion.
2. On April 1, 2002, Defendant was indicted by grand jury in the Superior Court on the charges of Assault Second Degree (“Assault”), Possession of a Firearm During the Commission of a Felony (“PFDCF”), and Possession of a Firearm By a Person Prohibited (“PFBPP”).²

¹ D.I. 22.

² D.I. 28.

3. On June 10, 2002, Defendant pled guilty to Assault and Carrying a Concealed Deadly Weapon (“CCDW”).³ As part of the plea agreement, the State dismissed the charge of PFDCE.⁴

4. On September 5, 2002, Defendant was sentenced to 2 years at Level V, suspended for 2 years at Level IV Home Confinement, suspended after 3 months for 1 year and 9 months at supervision Level III on the CCDW charge. On the Assault charge, Defendant was sentenced to 2 years at supervision Level V, suspended for 2 years at Level III, suspended after 1 year for 1 year at supervision Level II.⁵

5. Defendant’s criminal record indicates that Defendant is no longer serving any part of the sentence imposed in this case—No. 0112005167. In 2003, Defendant completed his sentences on both charges when Judge Richard Gebelein, by violation of probation sentence order dated July 16, 2003, sentenced Defendant to 90 days at Level V with no probation to follow on the Assault charge, and discharged Defendant as unimproved on the CCDW charge.

6. Defendant, through his Motion, contends that the sentence imposed upon him in this case was illegal and asks this Court to vacate the sentence and the convictions from his criminal record.

³ Carrying a Concealed Deadly Weapon was a lesser included offense of the PFBPP charge. D.I. 27.

⁴ Case Control Overview, Nov. 21, 2002.

⁵ D.I. 28.

7. Defendant asserts that the sentence was illegal because the Family Court violated his rights to a preliminary hearing and an amenability hearing by transferring the case to the Superior Court without his consent, and because it was unlawful to try Defendant as an adult for the crimes charged.⁶ Defendant's Motion fails for several reasons.

8. Defendant's request to vacate the illegal sentence presents a moot issue because he is no longer serving the sentence that he is challenging.⁷ Moreover, the request to vacate the convictions from Defendant's record seeks a remedy that Rule 35 does not permit.⁸

9. Defendant's claim that the Family Court violated his right to a preliminary or amenability hearing in Family Court fails because a proper indictment for a felony by a grand jury eliminates the need for a preliminary hearing, and any ruling on whether the preliminary hearing was improperly conducted will have no effect on the case.⁹

10. Moreover, Defendant's claim that the Superior Court lacked jurisdiction to try him as an adult fails because, at the time he committed the crime and at the

⁶ D.I. 22.

⁷ *Baltazar v. State*, 108 A.3d 1224, 2 (Del. 2015).

⁸ *Id.* at 1.

⁹ *Joy v. Superior Court*, 298 A.2d 315 (Del. 1972).

time he was charged, the Superior Court had original jurisdiction to prosecute Defendant on two of the crimes charged, PFDCF and PFBPP.

11. The version of 11 Del.C. § 1147A, PFDCF that existed from 1998 to 2018 stated that “[e]very person charged under this section over the age of 15 years shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law.”¹⁰

12. The contemporaneous version of 11 Del.C. § 1148, PFBPP, criminalized conduct by any juvenile over the age of 14 who possessed a handgun in violation of subsection (a)(5), which is the subsection Defendant was indicted on, and imposed a mandatory minimum sentence of six months of Level V incarceration “regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court.”¹¹

13. In 2001, the Delaware Supreme Court ruled that charges of PFDCF must be heard in the Superior Court and were not subject to a reverse amenability proceeding.¹²

14. Delaware Superior Court Criminal Rule 8(a) permits joinder of charges that arise out of the same act or transaction, and the Supreme Court has held that, where a juvenile necessarily must be tried in the Superior Court for certain offenses,

¹⁰ 11 Del.C. § 1147A(f) (Supp. 1998)

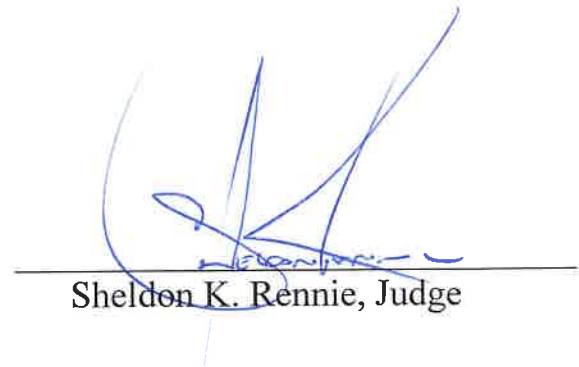
¹¹ 11 Del.C. § 1148(f)(1),(2) (Supp. 1998).

¹² *State v. Clay*, 2001 WL 1221667 (Del. Super. 2001).

it is within the Superior Court's discretion to decide whether a juvenile should be tried in the Superior Court on any companion charges.¹³

15. Accordingly, Defendant's Motion for Correction of Illegal Sentence is **DENIED.**

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

Original to Prothonotary

cc: Jonathan S. Johnson (SBI #00371518)

¹³ See generally, *State v. Anderson*, 697 A.2d 379, 383 (Del. 1997).