

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KHARAK SINGH,	§	
	§	No. 129, 2012
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	ID No. 1004013386
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: August 2, 2012  
Decided: September 6, 2012

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

***ORDER***

This 6<sup>th</sup> day of September 2012, it appears to the Court that:

(1) Defendant-Below/Appellant Kharak Singh appeals from a Superior Court order sentencing him for Unlawful Sexual Contact in the Third Degree and Unlawful Imprisonment in the First Degree. Singh raises one claim on appeal. Singh contends that the Superior Court imposed a sentence based upon a false factual predicate of lack of remorse, an aggravator. We find no merit to Singh's appeal, and affirm.

(2) Singh was arrested on multiple counts of Rape in the First Degree and other charges. He later pled guilty to Unlawful Sexual Contact in the Third Degree

and Unlawful Imprisonment in the First Degree; the remaining charges were dismissed or *nolle prosequi*. Singh was sentenced to a total of three years imprisonment at Level V, suspended after one year for decreasing levels of supervision. Singh moved for a reduction of sentence. The Superior Court denied the motion. This appeal followed.

(3) We may review a defendant's sentence for the following: "unconstitutionality; factual predicates which are either false, impermissible, or lack minimum indicia of reliability; judicial vindictiveness, bias, or sentencing with a 'closed mind;' and any other illegality."<sup>1</sup> Except for these constitutional and legal constraints, our review of a defendant's sentence is limited to determining whether the sentence is within the limits that the statute prescribes.<sup>2</sup>

(4) Singh contends that the Superior Court's sentencing decision was based on a false factual predicate—Singh's lack of remorse. In sentencing Singh, the Superior Court indicated why its sentence exceeded the presumptive sentence:

Now, this sentence is above guidelines due to what I consider to be vulnerability of the victim and, to be honest with you, lack of remorse. The first time I heard anything about remorse is what you said here this morning, so that's why it's above the six month presumptive sentence. It's twice the length of the presumptive sentence.

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<sup>1</sup> *Wynn v. State*, 23 A.3d 145, 148 (Del. 2011) (quoting *Siple v. State*, 701 A.2d 79, 83 (Del. 1997)).

<sup>2</sup> *Siple*, 701 A.2d at 83 (citing *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992)); see also *Jenkins v. State*, 8 A.3d 1147, 1155 (Del. 2010) (citing *Siple*, 701 A.2d at 83).

In denying the motion for resentencing, the Superior Court cited Singh's comments to both presentence officers, in which Singh described the event and his intoxication but did not indicate remorse. The Superior Court also explained that the sentence was also based on the vulnerability of the victim, who Singh conceded was intoxicated at the time.

(5) Singh correctly points out another portion of the Kent County presentence report, which indicates a showing of remorse. The report recounts Singh as stating:

It was more than I usually drink. That's not me, I'm not that type of person I am. I feel sorry for what I did and how I made her feel. If somebody did that to my sister (if he had one) I would probably want to kill them. I hurt my family that can't undo. I feel really sorry about how I made her feel.

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I accept responsibility. I feel really bad for hurting another human being.

(6) The Superior Court was not required to credit Singh's expression of remorse.<sup>3</sup> The Superior Court fully acknowledged the Kent County presentence report at sentencing and in its decision on the motion for reduction for sentence. The Superior Court was concerned with the lack of remorse expressed during Singh's interview with the New Castle County presentence officer, where Singh merely stated that both he and the victim were intoxicated and that his judgment

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<sup>3</sup> *Wynn*, 23 A.3d at 149.

was clouded. The Superior Court did not abuse its discretion by sentencing Singh to greater than the presumptive sentence or by denying the motion for resentencing.

(7) NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice