

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|--------------------|---|------------------------------|
| DAVON R. JOHNSON, | § | |
| | § | No. 316, 2009 |
| Defendant Below, | § | |
| Appellant, | § | |
| | § | Court Below: Superior Court |
| v. | § | of the State of Delaware, |
| | § | in and for New Castle County |
| STATE OF DELAWARE, | § | |
| | § | Cr. No. 0704013046 |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: March 10, 2010
Decided: May 10, 2010

Before **BERGER, JACOBS,** and **RIDGELY,** Justices.

ORDER

This 10th day of May, on consideration of the briefs of the parties, it appears to the Court that:

1) Davon R. Johnson appeals from the Superior Court’s denial of his Motion for Sentence Modification. Johnson and his co-defendants, who were armed, went to New Castle, Delaware, to commit robbery in order to obtain marijuana. Shots were fired and Rashaan Dixon was killed. Another person suffered a gunshot wound in her ankle. Johnson was charged with felony murder, second degree murder, first degree attempted robbery, second degree conspiracy, second degree assault, first degree reckless

endangering, and five counts of possession of a deadly weapon during the commission of a felony. Johnson pled guilty to manslaughter, first degree attempted robbery and second degree conspiracy. He also agreed to testify for the State.

2) The Superior Court sentenced Johnson and his two co-defendants on December 9, 2009. Before sentencing Johnson, the trial court heard testimony from the victim's family, Johnson's allocution, and arguments from counsel. The State recommended a sentence of 15 years at Level V for the manslaughter, 5 years at Level V for the attempted robbery, and two years of probation for the conspiracy. The Superior Court sentenced Johnson to 25 years at Level 5, suspended after 20 years, followed by decreasing levels of probation for the manslaughter; 15 years at Level V suspended after 5 years followed by probation for the attempted robbery; and two years at Level V suspended for probation for the conspiracy.

3) Johnson filed a Motion for Sentence Modification, arguing that his sentence should be reduced because his two co-defendants, who participated in the same criminal conduct, received significantly lighter sentences. The trial court denied his motion. On appeal, Johnson argues that the trial court abused its discretion by basing its sentencing decision, in part, on the presentence report, which contains unreliable information. In addition, Johnson repeats the claim that his sentence was too severe when compared to his co-defendants' sentences.

4) Generally, this Court will not review a sentence that is within the limits prescribed by the legislature.¹ But, it is an abuse of discretion for a sentencing court to base its sentence on inaccurate or unreliable information. In reviewing the basis for a trial court's sentence, "this Court will not find error of law or abuse of discretion unless it is clear from the record below that a sentence has been imposed on the basis of demonstrably false information or information lacking a minimal indicium of reliability."²

5) Johnson's appeal lacks merit. The presentence report consists almost entirely of Johnson's prior criminal record and the numerous police reports detailing the investigation. Naturally, the notes of interviews with witnesses or potential witnesses include hearsay or even double hearsay. But the police reports do not purport to be authoritative statements about Johnson's criminal activity. They are simply summaries of the witness interviews. As such, the police reports are sufficiently reliable to withstand review. The same is true for the evaluation provided by the Investigative Services Officer. That narrative compiles basic information about Johnson's background and offers a view about his prospects for improvement. Johnson points

¹*Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

²*Id.* at 843.

to no statement in the evaluation that is “demonstrably false” and offers no basis on which to conclude that it is unreliable.

6) Finally, with regard to the length of Johnson’s sentence, a comparison of the crimes he committed and the sentence imposed does not “lead to an inference of gross disproportionality.”³ Accordingly, it is not relevant whether other co-defendants received lesser sentences.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³*Crosby v. State*, 824 A.2d 894, 908 (Del. 2003) (Quotation omitted.)