

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEENAN E. BACON,	§	
	§	No. 636, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0512011932
Appellee.	§	

Submitted: June 17, 2010
Decided: August 31, 2010

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

ORDER

This 31st day of August 2010, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), and the Superior Court record, it appears to the Court that:

(1) The appellant, Keenan E. Bacon, has filed an appeal from the Superior Court’s October 2, 2009 denial of his “motion for modification/correction of sentence.” The appellee, State of Delaware, has moved to affirm the Superior Court’s judgment on the basis that it is

manifest on the face of Bacon's opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that Bacon was arrested in December 2005 on charges of first degree murder and related offenses stemming from the killing of 21-year old Michael Cannon in Seaford, Delaware. Under a pre-indictment plea agreement, Bacon pled guilty in April 2006 to Manslaughter, Possession of a Firearm during the Commission of a Felony, and Assault in the Third Degree. In June 2006, the Superior Court sentenced Bacon to five years at Level V for the weapon offense, twenty-five years at Level V suspended after fifteen years for decreasing levels of supervision for manslaughter, and one year at Level V suspended for probation for assault.

(3) Bacon did not file an appeal from the sentence. In October 2006, however, Bacon, through counsel, moved to reduce the sentence on the basis that Bacon was a minor at the time of the offense, had testified against his co-defendant, and had played a secondary role in the shooting of Michael Cannon. By order dated January 2, 2007, the Superior Court denied the motion for reduction of sentence on the basis that the "sentence [was] appropriate for the reasons stated at the time of sentence." Bacon did not appeal.

¹ Del. Supr.Ct. R. 25(a).

(4) In April 2007, Bacon, appearing *pro se*, moved to correct the sentence “in the interest of justice.” Bacon argued that the sentence was illegal because it exceeded the presumptive sentence set forth in the SENTAC guidelines. By order dated April 18, 2007, the Superior Court summarily denied the motion on the ground that the sentence was not illegal because it fell within the statutory range of authorized sentences. On appeal, this Court affirmed, holding:

The Superior Court did not err in concluding that Bacon’s sentence, which fell within the statutory range of authorized sentences, was not illegal. The Superior Court’s upward departure from the sentencing guidelines does not make Bacon’s sentence “illegal” under Superior Court Criminal Rule 35(a).²

(5) On August 19, 2009, Bacon filed a *pro se* motion for “modification/correction of sentence.” Bacon alleged that the sentence should be modified or corrected because it exceeded the SENTAC guidelines without stating “the proper rationale for going outside the guidelines.” By order dated October 2, 2009, the Superior Court denied Bacon’s motion as untimely, repetitive and without merit, noting that the sentencing judge had, in fact, articulated the aggravating and mitigating

² *Bacon v. State*, 2007 WL 2570813 (Del. Supr.).

factors at sentencing that justified the sentence imposed.³ This appeal followed.

(6) After careful consideration of the parties' positions on appeal and the Superior Court record, we have concluded that the denial of Bacon's motion for modification/correction should be affirmed on the basis of and for the reasons provided in the Superior Court's October 2, 2009 decision. Moreover, the Court agrees with the State that the issues on appeal were rejected in the Court's prior decision affirming the denial of Bacon's motion for correction of illegal sentence and are therefore barred pursuant to the "law of the case" doctrine.⁴

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ As noted by the Superior Court in its decision on appeal, the sentencing judge concluded that the applicable aggravating factors, identified as "need for correctional treatment, undue depreciation of the offense, [and] the vulnerability of the victim," outweighed the mitigating factor of "no prior convictions." Hr'g Tr. at 14-15 (June 23, 2006).

⁴ See *Black v. State*, 2005 WL 1950203 (Del. Supr.) (citing *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998)) (discussing "law of the case" doctrine).