

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEANDRAE THOMAS,	§	
	§	No. 211, 2012
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1009005841
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 26, 2012

Decided: November 9, 2012

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

ORDER

This 9th day of November, 2012, on consideration of the briefs of the parties, it appears to the Court that:

1) Deandrae Thomas appeals from his convictions on 12 charges, including trafficking in cocaine, possession of a firearm during the commission of a felony, and racketeering. He argues that the trial court's imposition of a 25 year sentence for racketeering violated the constitutional prohibition on cruel punishments, and that the trial court created an insufficient record for its decision to exceed the SENTAC guidelines. In addition, he claims that he received ineffective assistance of counsel.

The claims relating to his sentence lack merit, and this Court will not consider the inadequacy of counsel claim on direct appeal.

2) Thomas was indicted on 95 drug related offenses. He pled guilty to 12 charges in exchange for the State's agreement to *nolle pros* the remaining charges. The State made no agreement as to its sentencing recommendation. The trial court ordered a presentence investigation, and heard from counsel and Thomas at the sentencing hearing. The trial court then sentenced Thomas to a total of 58 years at Level V, suspended after 37 years for decreasing levels of probation supervision. As part of that sentence, Thomas received the maximum sentence of 25 years for racketeering, suspended after 12 years.

3) Thomas argues that his racketeering sentence violates Article I, Section 11 of the Delaware Constitution, which prohibits the State from imposing cruel punishment. In *Crosby v. State*,¹ this Court announced a two-part test to determine whether a sentence violates the Eighth Amendment of the United States Constitution, which prohibits cruel and unusual punishment:

To determine whether a particular sentence is prohibited, this Court must undertake a threshold comparison of the crime committed and the sentence imposed. If such a comparison leads to an inference of gross disproportionality, then this Court must compare [the defendant's]

¹ 824 A.2d .

sentence with other similar cases to determine whether the trial court acted out of step with sentencing norms.²

4) Thomas contends that there should be a different test for assessing a sentence under the Delaware Constitution because the United States Constitution prohibits “cruel and unusual” sentences, whereas the Delaware Constitution prohibits “cruel” sentences. He asks the Court to modify the *Crosby* standard by prohibiting sentences that lead to an inference of disproportionality – not gross disproportionality. In addition, Thomas argues that an inference of disproportionality should arise whenever a defendant who has had a limited opportunity for rehabilitation is sentenced to the statutory maximum term.

5) We need not decide whether the *Crosby* test applies to a claim under the Delaware Constitution because, even under Thomas’s proposed standard, there is no basis on which to conclude that his sentence was disproportionate. The fact that the SENTAC guidelines set a range of 2-5 years does not make a sentence above that range disproportionate. It is settled that “[t]here is no constitutional or statutory right in Delaware to appeal a criminal punishment on the sole basis that it deviates from the SENTAC sentencing guidelines.”³

² *Id.* at 908 (Citations and quotations omitted).

³ *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

6) Moreover, proportionality is determined by reference to the time the offender will serve in prison.⁴ Racketeering is a Class B violent felony punishable by up to 25 years at Level V. But Thomas's 25 year sentence was suspended after 12 years. The time he will spend in prison is less than half the maximum set by the General Assembly. Thus, the sentence does not raise an inference of disproportionality.

7) Thomas also contends that the trial court failed to make an adequate record to support its deviation from the SENTAC guidelines. We disagree. The State described Thomas's criminal enterprise:

During the month and a half the Delaware State Police intercepted his phone calls, they heard thousands of separate phone calls. The vast majority of . . . these phone calls was the defendant engaging in criminal activity.

* * *

[T]he defendant arranged drug deals, collected drug debts, arranged transportation for his drug enterprise, plotted thefts and robberies, discussed how to avoid the police, worried about his guns, and the list . . . goes on and on and on.

* * *

Deandrae Thomas is a true racketeer, and that's what makes him so dangerous.⁵

⁴ *Crosby v. State*, 824 A.2d at 908.

⁵ Appellant's Appendix, A-37.

The trial court noted that Thomas represented a “major concern for the community in the event of release” and that he was engaged in “actual racketeering . . . as opposed to other things that might happen to fall into Delaware’s definition of it”⁶ These findings are sufficient to support a departure from the SENTAC guidelines.

8) Thomas also argues that he was denied the effective assistance of counsel. This Court generally does not consider claims of ineffective assistance of counsel on direct appeal. Rather, we wait for a full record to be developed in a Superior Court Rule 61 post-conviction proceeding.⁷

NOW, THEREFORE, IT IS ORDERED that the sentence imposed on Deandrae Thomas for the crime of racketeering be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ Appellant’s Appendix, A-44,45.

⁷ *Sahin v. State*, 7 A.3d 450, 451 (Del. 2010).