

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PERRY BUCKNER,	§
	§
Defendant Below,	§
Appellant,	§ No. 19, 2001
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr.A. ID No. 9910020658
Plaintiff Below,	§
Appellee.	§

Submitted: September 11, 2001

Decided: September 20, 2001

Before VEASEY, Chief Justice, WALSH, and HOLLAND, Justices.

ORDER

This 20<sup>th</sup> day of September 2001, upon consideration of the briefs of the parties, it appears that:

(1) This is an appeal from the imposition of sentence in the Superior Court. The appellant, Perry Buckner (“Buckner”), contends that the Superior Court abused its discretion in sentencing him to twenty years imprisonment at Level V, the statutory maximum, following his guilty plea to a charge of third degree rape involving his minor daughter. Buckner argues that the sentence imposed by the Superior Court exceeded the State’s recommendation and SENTAC guidelines.

(2) Sentencing guidelines are voluntary and not binding on the sentencing judge. *Mayes v. State*, Del. Supr., 604 A.2d 839, 845 (1992). Nor may they be the basis for appeal. *Wilson v. State*, Del. Supr., No. 447, 1996, Walsh, J. (Feb. 21, 1997) (ORDER). A sentence within the statutory limits will not be disturbed on appeal in the absence of a showing of vindictiveness, reliance on impermissible factors or a closed mind. *Cheeks v. State*, Del. Supr., No. 6, 2000, Veasey, C.J., 2000 WL 1508578 (Sept. 25, 2000) (ORDER). Given the nature of the circumstances of the offense to which the defendant pled guilty and his prior criminal record (Buckner was on federal probation at the time of commission of the offense) we find no basis for concluding that the sentencing judge abused his discretion in imposing the maximum sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh  
Justice