

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETE ANDERSON,	§
	§
Defendant Below-	§ No. 220, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN91-10-1616 RI
Plaintiff Below-	§ IN91-10-0471 RI
Appellee.	§

Submitted: October 2, 2001

Decided: October 12, 2001

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 12th day of October 2001, upon consideration of the appellant's opening brief, the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), the appellant's response to the motion to affirm, the appellee's reply, the Superior Court's September 6, 2001 report following remand, and the parties' supplemental submissions, it appears to the Court that:

(1) The defendant-appellant, Pete Anderson, appealed from an order of the Superior Court denying his motion for reduction/modification of sentence.¹ Plaintiff-appellee State of Delaware originally moved to affirm

¹Super. Ct. Crim. R. 35.

the judgment of the Superior Court on the ground that it was manifest on the face of the opening brief that the appeal was without merit.² After the filing of Anderson's response to the motion to affirm, however, the State proposed that this Court hold in abeyance its disposition of the motion to affirm pending remand to the Superior Court for further proceedings. We adopted the State's proposal and remanded the matter to the Superior Court. On September 10, 2001, the Superior Court filed its report dated September 6, 2001.

(2) The record reflects that, on May 11, 1992, Anderson pleaded guilty to Assault in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. On July 24, 1992, the sentencing hearing was held. On the assault conviction, Anderson received a sentence of 10 years incarceration at Level V, to be followed by 6 months at Level III. On the weapon charge, he received a sentence of 20 years incarceration at Level V. Anderson did not file a direct appeal of his convictions or sentences. His motions for postconviction relief were denied by the Superior Court.

(3) In his appeal, Anderson claimed that his July 24, 1992 sentences were enhanced significantly above the SENTAC guidelines based

²Supr. Ct. R. 25(a).

upon the Superior Court judge's mistaken belief that he had more than one prior violent felony conviction.³ In essence, Anderson claimed that his sentences were based upon a false factual predicate.⁴ Following remand, the Superior Court ordered the transcript of Anderson's July 24, 1992 sentencing hearing and submissions from Anderson and the State. Based on its review of these materials as well as the SENTAC guidelines in effect in 1992, the Superior Court determined that Anderson was convicted of two violent felonies prior to July 24, 1992,⁵ that both offenses qualified under the SENTAC guidelines as violent felonies for purposes of determining aggravating circumstances, and that Anderson's July 24, 1992 sentences were within the SENTAC guidelines.

(4) We have reviewed the Superior Court's report, the transcript of the sentencing hearing, the SENTAC guidelines in effect in 1992 and the parties' supplemental submissions. We conclude that the Superior Court's determination is correct and that Anderson's claim that his sentences were based upon a false factual predicate is without merit. Anderson is incorrect

³The sentencing judge has retired from the Superior Court.

⁴*Siple v. State*, Del. Supr., 701 A.2d 79, 83 (1997).

⁵Specifically, on October 9, 1988, Anderson was convicted of Unlawful Sexual Intercourse in the Third Degree and Unlawful Sexual Contact in the First Degree, stemming from two separate incidents.

that, under the SENTAC guidelines, his two prior convictions should have been consolidated for sentencing purposes and that he was sentenced improperly on the weapon conviction as the lead offense.⁶ Moreover, as the guidelines reflect, Anderson's 20-year sentence for Possession of a Deadly Weapon During the Commission of a Felony, a Class B Felony,⁷ and his 10-year sentence for Assault in the First Degree, a Class C Felony,⁸ were within the statutory range for those offenses.⁹ As such, absent evidence of a false factual predicate, Anderson has no right to appellate review of his sentences.¹⁰

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶Delaware Truth-in-Sentencing Bench Book (Revised May 25, 1991), pp. 17, 19, 55.

⁷11 *Del. C.* § 1447.

⁸11 *Del. C.* § 613.

⁹11 *Del. C.* § 4205(b) (2) and (3).

¹⁰*Siple v. State*, 701 A.2d at 83.