

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYAIRE BROOKS,	§	
	§	No. 395, 2012
	§	
Defendant-Below,	§	Court Below: Superior Court of
Appellant,	§	the State of Delaware, in and for
	§	New Castle County
v.	§	
	§	Cr. I.D. No. 1104024338
STATE OF DELAWARE,	§	
	§	
Plaintiff-Below,	§	
Appellee.	§	

Submitted: December 12, 2012

Decided: December 13, 2012

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

ORDER

This 13th day of December 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Tyaire Brooks, the defendant-below (“Brooks”), appeals from a Superior Court order denying his Superior Court Criminal Rule 35(b) motion for sentence reduction. Brooks did not directly appeal from the original trial court sentencing order. On appeal from the denial of his Rule 35(b) collateral attack, Brooks argues that the trial judge reversibly erred by failing to consider his factors in mitigation. We **AFFIRM**, because a trial court’s failure to articulate explicitly

each factor upon which it bases its decision is not, without more, an abuse of discretion.

2. In December 2011, Brooks pled guilty to five felony charges.¹ As part of his plea agreement, which the trial court accepted, the State agreed to recommend a sentence of no more than 11 years of unsuspended Level V supervision. On March 9, 2012, the trial judge sentenced Brooks to a term of 34 years of imprisonment, of which the first 26 years would be served at unsuspended Level V supervision, to be followed by decreasing levels of supervision. The statutory limits applicable to Brooks' convictions ranged from 8 to 71 years of imprisonment.

3. On June 18, 2012, the Superior Court denied Brooks' Rule 35(b) motion for sentence reduction.² In its one-paragraph, handwritten order, the court ruled that "there were ample aggravating factors that justified the sentence, *i.e.* undue depreciation [sic] of seriousness of offense, custody status at time of offense, repeated violations of probation, need for correctional treatment, to name

¹ Brooks pled guilty to the following five charges: Assault First Degree, Possession of a Firearm During Commission of a Felony, Reckless Endangering First Degree, Robbery Second Degree, and Possession of a Deadly Weapon By a Person Prohibited.

² *State v. Brooks*, Cr. I.D. No. 1104024338 (Del. Super. June 18, 2012).

a few. In short, defendant's record is appalling."³ On July 17, 2012, Brooks timely appealed from that order.

4. The substantive issue presented is whether a trial court's failure to articulate explicitly every factor upon which it bases a decision constitutes an abuse of discretion. We review a trial court order denying a motion for sentence reduction for abuse of discretion.⁴ An abuse of discretion occurs "when a court has exceeded the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice to produce injustice."⁵

5. On appeal, Brooks argues that the trial judge erred by failing to consider his mitigating factors, thereby sentencing him with a closed mind as defined in *Ellerbe v. State*,⁶ and similarly failed to consider his mitigating factors in ruling on his Rule 35(b) motion. Because Brooks did not appeal directly from his March 9, 2012 sentencing order, we may not consider on this collateral proceeding, his claims that the trial judge committed legal error at his original sentencing.⁷ Those claims are now procedurally barred.⁸

³ *Id.*

⁴ *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002).

⁵ *Harper v. State*, 970 A.2d 199, 201 (Del. 2009) (internal quotation marks and citation omitted).

⁶ 755 A.2d 387, 2000 WL 949625, at *1 (Del. May 11, 2000) (TABLE).

⁷ Although Brooks' counsel claims that he "preserved" the issue of the trial judge's alleged sentencing errors "by way of" filing his Rule 35(b) motion for sentence reduction, his argument is unpersuasive and does not vest this Court with jurisdiction to consider the trial court

6. Moreover, Brooks’ argument that the trial judge erroneously failed to consider his mitigating factors when deciding his Rule 35(b) motion lacks merit. In *Sudler v. State*⁹ (which involved a review of a trial judge’s exercise of discretion in declaring a mistrial), we held that a “trial judge’s determination . . . may not be set aside simply because the court may have failed to explicitly verbalize the precise words . . . or to articulate on the record all of the facts which support finding a deliberate exercise of discretion.”¹⁰ That ruling is equally applicable here. The trial judge did not abuse her discretion by not explicitly addressing Brooks’ presumed mitigating factors in her order denying his Rule 35(b) motion. We therefore affirm the judgment of the Superior Court.

7. On a related note, we are concerned by the failure of Brooks’ counsel to file a direct appeal to this Court from the imposition of Brooks’ original sentence. Such a direct appeal may have had arguable merit, because: (i) then-18-year-old Brooks was originally charged with (although he did not later plead to) the serious

sentencing order where the jurisdiction does not exist. *See Bailey v. State*, 610 A.2d 723, 1992 WL 115196, at *1 (Del. Apr. 28, 1992) (TABLE).

⁸ *See* SUPR. CT. R. 6(a) (requiring any direct criminal appeals to be filed within 30 days after the sentence is imposed); *see also Cochran v. State*, 931 A.2d 436, 2007 WL 1452725, at *1 (Del. May 17, 2007) (TABLE) (holding claims not raised on direct appeal are procedurally barred in a collateral proceeding).

⁹ 611 A.2d 945 (Del. 1992).

¹⁰ *Id.* at 949 (internal quotation marks omitted) (citing *Hughey v. State*, 522 A.2d 335, 339 (Del. 1987)); *see Arizona v. Washington*, 434 U.S. 497, 517 (1978).

felony of Attempted Murder First Degree, (ii) Brooks has a reported IQ of 57-62 that qualifies him as mentally challenged, and (iii) the imposition of an overall sentence of 34 years (of which the first 26 years must be served at unsuspended Level V supervision) trebled the State's recommendation of an 11-year term of imprisonment.

8. We direct appellate counsel, who was also Brooks' trial counsel, to move to withdraw as his counsel in the Superior Court and to ask the Superior Court to appoint new counsel for Brooks. New trial counsel may then independently decide whether or not to file a motion for postconviction relief under Superior Court Criminal Rule 61 on ineffective assistance grounds.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice