

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL HARRIS,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

No. 457, 1999

Court Below: Superior Court  
of the State of Delaware,  
in and for Sussex County:  
Cr.A. No. 98-02-0142

Submitted: May 16, 2000

Decided: May 23, 2000

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

**ORDER**

This 23rd day of May 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1. On August 25, 1999, in a prior appeal, this Court found that the record on appeal precluded a proper appellate review of the sentence imposed on Harris on January 27, 1999, by the Superior Court and, therefore, remanded this matter to the Superior Court for a resentencing. *Samuel Harris v. State*, Del. Supr., No. 37, 1999, Holland, ORDER August 25, 1999. Jurisdiction not retained.

2. On September 27, 1999, the Superior Court resentenced Harris to 8 years incarceration pursuant to the Habitual Offender Statute, 11 Del. C. §4214. Harris now appeals that sentence. The appeal is without merit.

3. Harris seeks to object to a comment made by the judge at the trial. This issue is not properly before this Court because it is not an issue arising out of the resentencing. *See United States v. Parker*, 7th Cir., 101 F.3d 527 (1996).

4. In any case, Harris did not object to the judge's remarks at the trial. The remarks, therefore, would have to be reviewed under a plain error standard. There has been no showing that Harris suffered any substantial prejudice to his rights because of the remarks. Del. Supr., Ct.R. 8. *United States v. Olano*, 507 U.S. 725 (1993).

5. At the habitual offender hearing Harris did not deny his prior convictions as shown in the State's motion to declare Harris a habitual offender.

6. The sentence imposed was within the mandate of the statute. 11 Del. C. §4214. No error of law or plain error occurred

during the resentencing. This Court will not interfere with the Superior Court's imposition of a sentence absent evidence of an abuse of discretion by the sentencing judge. *Mayes v. State*, Del. Supr., 604 A.2d 839, 842-43 (1992). We have reviewed carefully the record in this case and conclude that there was no abuse of discretion by the Superior Court in imposing Harris's sentence.

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

BY THE COURT:

/s/Maurice A. Hartnett, III

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Justice