

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN H. BENGE, JR.,	§	
	§	No. 137, 2004
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID. No. 0301005493
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 13, 2004
Decided: November 12, 2004

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

ORDER

This 12th day of November, 2004, on consideration of the briefs of the parties, it appears to the Court that:

1) John H. Benge, Jr., appeals from his conviction, following a guilty plea, of two counts of burglary third degree, three counts of unlawful interception of communications (wiretapping), and one count of attempted wiretapping. Benge argues that his three year prison sentence for the first wiretapping offense violated his constitutional right to trial by jury.

2) Benge admitted that he illegally entered his former wife's home, and installed a recording device in order to eavesdrop on her. He entered his guilty plea

on these charges three months after being sentenced on several violent felony charges, which also involved his former wife and her boyfriend. After hearing from the victim and Benge, the Superior Court sentenced Benge outside the SENTAC guidelines because it found “a lack of remorse, among other matters.”

3) Benge’s sole argument on appeal is that, under the holding in *Blakely v. Washington*,¹ the trial court violated his constitutional right to a trial by jury because it exceeded the SENTAC sentencing guidelines. In *Blakely*, the United States Supreme Court invalidated a sentence that exceeded the “standard range” but not the statutory maximum term for the crime. The governing state sentencing scheme required courts to find “substantial and compelling reasons” before imposing an “exceptional sentence” (one that exceeds the standard range), and provided appellate review of the record in support of the trial court’s findings. *Blakely* invalidated the exceptional sentence because it exceeded the maximum sentence that could be imposed based solely on a jury verdict.

4) *Blakely* does not impact Delaware’s sentencing scheme because the SENTAC guidelines are voluntary and non-binding. As we explained in *Siple v. State*:²

¹124 S.Ct. 2531 (2004).

² 701 A.2d 79, 82-83 (Del. 1997)(Citations omitted.).

On September 15, 1987, this Court issued Administrative Directive Number Seventy-Six. That directive implemented the sentencing guidelines that had been developed by SENTAC, and provided that:

2. Any judge who finds a particular sentencing standard inappropriate in a particular case because of the presence of aggravating or mitigating or other relevant factors need not impose a sentence in accordance with the standards but such judge shall set forth with particularity the reasons for the deviation....

* * *

3. The sentencing standards are considered voluntary and nonbinding; thus no party to a criminal case has any legal or constitutional right to appeal to any court a statutorily authorized sentence which does not conform to the sentencing standards.

* * *

This Court's Administrative Directive ... requires that reasons be given for deviations from SENTAC's sentencing guidelines because this Court *does* have appellate jurisdiction to review criminal sentences on the basis of alleged: unconstitutionality; factual predicates which are either false, impermissible, or lack minimum indicia of reliability; judicial vindictiveness, bias, or sentencing with a "closed mind;" and any other illegality. Except for these constitutional and legal constraints, it is well-established that appellate review of criminal sentences is limited in Delaware to a determination that the sentence is within the statutory limits. Delaware, unlike the federal and several state jurisdictions has not provided for appellate review of criminal punishments that deviate from sentencing guidelines.

Thus, the trial court must explain its reasons for doing so, but it is authorized to exceed the SENTAC guidelines without making any factual findings beyond those reflected in the jury's verdict.

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

BY THE COURT:

/s/ Carolyn Berger
Justice