

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTHUR J. GOVAN,	§	
	§	No. 669, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 92010166DI
Appellee.	§	

Submitted: July 19, 2011  
Decided: August 25, 2011

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

**O R D E R**

This 25<sup>th</sup> day of August 2011, upon consideration of the opening and supplemental opening briefs filed by the appellant, Arthur J. Govan, the motion to affirm and supplement to motion to affirm filed by the appellee, State of Delaware, and the Superior Court record, it appears to the Court that:

(1) Following a Superior Court jury trial in June 1993, Arthur J. Govan was convicted of two counts of Murder in the First Degree, two counts of Felony Murder (FM), one count of Burglary in the First Degree, five companion counts of Possession of a Deadly Weapon During the Commission of a Felony (PDWDCF), and one count of Conspiracy in the

First Degree. On September 7, 1993, Govan was sentenced to four life sentences for the four murder convictions, to five twenty-year sentences for the five counts of PDWDCF, to ten years for Burglary in the First Degree, and to five years for Conspiracy in the First Degree.

(2) In 2008, the Superior Court vacated the FM convictions and sentences. In 2009, the Superior Court vacated the companion PDWDCF convictions and sentences.

(3) On June 8, 2010, Govan filed a motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a) (“Rule 35(a”). Govan asked the court to vacate the previously-vacated PDWDCF convictions and sentences. Govan also sought to correct the burglary sentence from ten to two years. On July 22, 2010, Govan’s motion was referred to a Superior Court Commissioner for a report and recommendation.<sup>1</sup>

(4) By report dated August 31, 2010, the Commissioner recommended that Govan’s motion for correction of sentence should be denied.<sup>2</sup> Thereafter, by order dated September 14, 2010, a Superior Court Judge denied the motion for correction of sentence. The denial order did

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<sup>1</sup> See docket at 150, *State v. Govan*, Del. Super., Cr. ID No. 92010166DI (noting referral of motion to commissioner).

<sup>2</sup> *State v. Govan*, 2010 WL 3707416 (Del. Super. Ct.).

not, however, reflect that the Judge had considered the Commissioner's August 31, 2010 report and recommendation.

(5) On September 16, 2010, Govan filed a motion for reconsideration of the Commissioner's report and recommendation. By order dated September 24, 2010, the Superior Court Judge denied the motion for reconsideration. The denial order did not, however, reflect that the Judge had reviewed the matter *de novo*.

(6) Govan filed this appeal from the Superior Court's September 14 and 24, 2010 orders. On November 29, 2010, the State filed a motion to affirm.

(7) By Order dated February 17, 2011, we vacated the Superior Court's September 14 and 24, 2010 orders and remanded this matter with jurisdiction retained. In the remand Order, we instructed that the Superior Court Judge file a report "confirming that the Superior Court's records and those of the Department of Correction accurately reflect" that Govan's FM-related PDWDCF convictions and sentences were vacated in 2009. We also instructed that the Superior Court Judge rule on the balance of Govan's sentence correction motion, *i.e.*, on the allegation that the ten-year sentence

for burglary was incorrect, after reviewing *de novo* the Commissioner's report and recommendation.<sup>3</sup>

(8) On remand, the Superior Court Judge issued two orders. First, by order dated March 18, 2011, the Judge confirmed that the Superior Court had vacated the FM-related PDWDCF convictions and sentences in 2009. The Judge's order did not, however, confirm (or address in any way), the accuracy of the Department of Correction's records. Second, by order dated March 22, 2011, the Judge denied the motion for correction of sentence after *de novo* review of the Commissioner's report and recommendation.

(9) After receipt of the Superior Court's March 18 and 22, 2011 orders in this Court, Govan was granted leave to file a supplemental opening brief, and the State filed a supplement to its motion to affirm. Upon return of the record from remand, the matter was submitted to the Court for decision.

(10) In his opening brief as supplemented, Govan continues to argue that he is entitled to a correction of the ten-year sentence imposed for Burglary in the First Degree. Govan's claim is without merit. "Appellate

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<sup>3</sup> Title 10, section 512 of the Delaware Code and Superior Court Criminal Rule 62 provide that a commissioner's report and recommendation in a case-dispositive criminal matter is subject to *de novo* review by a judge. Del. Code Ann. tit. 10, § 512(b) (1999); Del. Super. Ct. Crim. R. 62(a)(5)(iv). *See also* Administrative Directive of the President Judge of the Superior Court, No. 2007-5 (Dec. 6, 2007) (available at [http://courts.delaware.gov/Superior/pdf/Administrative\\_Directive\\_2007-5.pdf](http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2007-5.pdf)).

review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature.”<sup>4</sup> When Govan was sentenced, ten years was the maximum penalty authorized by the then-extant statute governing Burglary in the First Degree.<sup>5</sup> Furthermore, the Superior Court articulated its reasons when imposing the maximum penalty in Govan’s case.<sup>6</sup>

(11) Govan also argues that counsel should have been appointed for him on remand. Govan’s argument is not persuasive.<sup>7</sup> Be that as it may, in the interest of justice and to satisfy the unfulfilled part of the Court’s February 17, 2011 remand Order, the Court will direct that counsel for the State review the records of the Department of Correction and submit written confirmation to this Court and the Superior Court that the Department’s records accurately reflect that Govan’s FM-related PDWDCF convictions

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<sup>4</sup> *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992) (quoting *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989)).

<sup>5</sup> See Del. Code Ann. tit. 11, §§ 826 & 4205(b)(3) (Supp. 1992).

<sup>6</sup> See *Dennison v. State*, 2006 WL 1971789 (Del. Supr.) (affirming denial of relief under Rule 35(a) when challenge of sentence based solely on SENTAC guidelines); see also *Bailey v. State*, 459 A.2d 531, 535 (Del. 1983) (concluding that imposition of maximum sentence was not an abuse of discretion).

<sup>7</sup> See *Garnett v. State*, 1998 WL 184489 (Del. Supr.) (concluding that Superior Court was not required to appoint counsel in Rule 35(a) proceeding) (citing *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)).

and sentences were vacated in 2009. The Court will stay the issuance of the mandate pending the State's submission and further Order of the Court.<sup>8</sup>

NOW, THEREFORE, IT IS ORDERED that:

A. The motion to affirm as supplemented is GRANTED. The judgment of the Superior Court is AFFIRMED.

B. Counsel for the State is directed to review the records of the Department of Correction and thereafter confirm, in writing, served and filed in the Superior Court and in this Court within ten days of the date of this Order, that the Department's records accurately reflect that Govan's FM-related PDWDCF convictions and sentences were vacated in 2009.

C. Issuance of the mandate is hereby STAYED pending further Order of the Court.

BY THE COURT:

Randy J. Holland  
Justice

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<sup>8</sup> See *Atlas Sanitation Co. v. State*, 595 A.2d 380, 380 (Del. 1991) (providing that the Court may attach conditions for issuance of the mandate and thereby reserve jurisdiction).