

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. HARRIS,	§
	§ No. 84, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN04-03-0139;
	§ 0141-0143
Plaintiff Below-	§
Appellee.	§

Submitted: July 29, 2005
Decided: September 30, 2005

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 30th day of September 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kevin L. Harris, filed an appeal from the Superior Court’s February 7, 2005 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). Because Harris’ sentence for Possession of Marijuana With Intent to Deliver improperly exceeds the statutory maximum, we remand this matter to the Superior Court for re-sentencing.

(2) In August 2004, Harris pleaded guilty to one count of Possession of Marijuana With Intent to Deliver, two counts of Maintaining a

Dwelling for Keeping Controlled Substances, and one count of Conspiracy in the Second Degree. He was sentenced on the possession conviction to 10 years incarceration at Level V, to be suspended after 8 years for decreasing levels of probation. On the remaining two convictions, he was sentenced to a total of 6 years incarceration at Level V, to be suspended for probation. Harris did not file a direct appeal from his convictions and sentences.

(3) In January 2005, Harris moved for correction of an illegal sentence.¹ The Superior Court denied the motion on the ground that the SENTAC guidelines did not form a proper basis for Harris' motion. In its answering brief on appeal, the State laudably concedes that Harris' sentence for Possession of Marijuana With Intent to Deliver exceeds the statutorily-authorized maximum.² The State agrees with Harris that the matter should be remanded to the Superior Court for re-sentencing.

¹ Rule 35(a) permits the Superior Court to correct an illegal sentence at any time. Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized maximum. *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

² Del. Code Ann. tit. 16, § 4752(a) (“ . . . any person who manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance . . . classified in Schedule I, II, III, IV or V . . . is guilty of a Class E felony”); Del. Code Ann. tit. 11, § 4205(b) (5) (“The term of incarceration which the court may impose for a felony is fixed as follows: [f]or a class E felony up to 5 years to be served at Level V.”)

NOW, THEREFORE, IT IS ORDERED that Harris' sentencing order is VACATED. This matter is hereby REMANDED to the Superior Court for a new sentencing hearing in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice