

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL S. RIEGO,	§	
	§	No. 171, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0307019183
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 20, 2005
Decided: October 4, 2005

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of October 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The defendant-below appellant, Michael Riego, appeals from the denial by the Superior Court of his motion to modify his sentence for Violation of Privacy. The Superior Court sentenced Riego to the statutory maximum of two years confinement at Level V. Riego contends that the enhancement of his sentence based upon aggravating circumstances found by the Superior Court was in violation of his Sixth Amendment rights. Riego also contends that the Superior Court erred in finding aggravating circumstances as a basis to enhance his sentence. Because we find no merit to these arguments, we affirm.

2. Riego was arrested after his wife discovered child pornography in two locked rooms of their house. Mrs. Riego contacted police after discovering the information, and police obtained a search warrant based on that information. Pursuant to the warrant, the police searched Riego's rooms and discovered the pornographic material as well as recording devices, audiotapes, and hidden cameras. The police also found a videotape that depicted Mrs. Riego's fourteen year old daughter naked.

3. Riego pled guilty to Violation of Privacy as well as to five counts of Unlawful Dealing in Child Pornography, in violation of 11 *Del. C.* § 1109, and one count of Interception of Communications, in violation of 11 *Del. C.* § 2402.

4. At Riego's sentencing hearing, his stepdaughter testified about the lasting impact of the defendant's recording her. Following the State's and the Defendant's arguments, Riego addressed the Superior Court. After hearing all relevant testimony, the Superior Court sentenced Riego to two years confinement at Level V for the Violation of Privacy count.¹

5. It is well established that appellate review of a criminal sentence is limited in Delaware, with few exceptions, to a determination that the sentence is

¹ While not pertinent to his appeal, the Superior Court also sentenced Riego to an aggregate sentence of ten years confinement at Level V, suspended after serving five years of consecutive supervision at Level III on the Child Pornography counts, as well as two years of concurrent probation on the Communications charge. He does not challenge those counts and their sentences.

within the statutory limits.² In this case Riego's sentence fell within the statutory range of authorized sentences for violation of privacy. As this Court has held in similar cases,³ neither *Apprendi v. New Jersey*⁴ nor *Blakely v. Washington*⁵ applies to this outcome, given the voluntary and nonbinding nature of Delaware's sentencing guidelines.

6. Exceptions to this Court's jurisdiction to hear sentencing appeals do exist. As noted in *Benge v. State*,⁶ "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." Absent one of these exceptions, however, limited appellate review requires affirmance of the sentence so long as the sentence fits within the statutory limits.⁷

² *Shabazz v. State*, No. 545, 2004, 2005 Del. LEXIS 221, at *2 (Del. June 14, 2005); *James v. State*, No. 440, 2004, 2005 Del. LEXIS 162, at *2-3 (Del. Apr. 25, 2005); *Siple v. State*, 701 A.2d 79, 82-83 (Del. 1997). See also *Benge v. State*, No. 137, 2004, 2004 Del. LEXIS 506, at *3-4 (Del. Nov. 12, 2004).

³ See *Shabazz*; *James*; *Siple*, *supra* at note 1.

⁴ 530 U.S. 466 (2000).

⁵ 542 U.S. 296 (2004).

⁶ *Benge*, 2004 Del. LEXIS 506, at *3.

⁷ *Id.*, at *3-4.

7. Riego also pled guilty to Invasion of Privacy, a class G felony. Under 11 *Del. C.* § 4205(b)(7), “[t]he term of incarceration which the court may impose . . . [f]or a class G felony [is] up to 2 years to be served at Level V.” The trial court sentenced Riego to 2 years to be served at Level V which is authorized by statute.

8. Defendant argues, however, that:

In *Blakely*, the Court equated the phrase “statutory maximum” with “standard sentences,” and described it further as “the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.*” . . . Any upward departure from the “standard” sentencing guidelines, even if it is within the statutory limits for a class of crime, is a violation of due process when the departure is based on a judge’s finding of fact.⁸

(emphasis in original). The crux of Riego’s argument is rooted in the *Blakely* case. As this Court has recognized, however, *Blakely* simply does not apply to Delaware’s “voluntary and non-binding” sentencing guidelines.⁹

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ Appellant’s Opening Br. at 6 (internal citations omitted) (emphasis in original).

⁹ *Benge*, 2004 Del. LEXIS 506, at *2.