

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. JONES,	§
	§
Defendant Below-	§ No. 442, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. No. IK04-07-0804
Plaintiff Below-	§ Cr. ID 0407010529
Appellee.	§

Submitted: September 27, 2005
Decided: November 28, 2005

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 28th day of November 2005, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael Jones, filed this appeal from the Superior Court's denial of his third motion seeking modification of his sentence. The State of Delaware has filed a motion to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Jones' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Jones pled guilty in November 2004 to one count of trafficking in cocaine. In exchange for his guilty plea, the State dismissed

the remaining charges against Jones. The Superior Court immediately sentenced Jones to fifteen years at Level V imprisonment, suspended after serving two years, followed by two years at decreasing levels of supervision. The Superior Court also imposed a \$50,000 fine but suspended payment of all but \$500 of the fine. At the time of sentencing the Superior Court did not speak about the statutory surcharges required by law. These surcharges were included in the written sentence order.

(3) In his latest motion for modification of sentence, Jones argued that the sentencing order, which imposed a financial obligation of \$17,191, did not accurately reflect the fine imposed upon him at his sentencing hearing. Jones contends that this constitutes an illegal enhancement of his sentence.

(4) The State, on the other hand, contends that the \$17,191 financial obligation reflected in the Superior Court's sentencing order is not a fine. According to the State, the financial obligations reflect statutory assessments for the Victim Compensation Fund¹ and Substance Abuse Rehabilitation Fund,² as well as a surcharge for the Videophone Fund.³ These assessments are required by law and cannot be suspended. Therefore, the sentence imposed by the Superior Court is not illegal and cannot be modified to suspend the statutory surcharges.

¹ 11 Del. C. § 9012(a) (2001).

² 16 Del. C. § 4802A(a) (2003).

³ 11 Del. C. § 4101(d) (Supp. 2004).

(5) Having carefully considered the parties' respective positions, we find it manifest on the face of Jones' opening brief that the appeal is without merit. Contrary to Jones' argument, the Superior Court's sentencing order accurately reflects the \$500 fine imposed upon him at sentencing. The statutory assessments he now challenges are additional to the \$500 criminal fine imposed. It is clear that Jones is not entitled to a modification or correction of his sentence because the assessments are mandated by statute and are not entitled to suspension.

(6) Although the imposition of statutory surcharges was not announced at the time of sentencing by the sentencing judge, they are mandatory and the written sentence order served as a correction of sentence pursuant to Superior Court Criminal Rule 35(a). The Superior Court did not abuse its discretion when it denied Jones' motion for modification of sentence. The issue of whether he is entitled under all of the circumstances to have his plea set aside under Rule 61 is not before us.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice