IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIE R. BRYANT,	)	
	)	No. 561, 2005
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for Sussex County
	)	
STATE OF DELAWARE,	)	Cr. ID. No. 0403010937
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: May 3, 2006
Decided: June 12, 2006

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

O R D E R

This 12th day of June 2006, upon consideration of the briefs of the parties, it appears to the Court that:

(1) William R. Bryant, the defendant-below, appeals from his fifty-year sentence for Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony. Bryant claims that the sentencing judge abused his discretion by having sentenced Bryant with a "closed mind." Because the sentencing judge acted within his discretion when he sentenced Bryant to the statutory maximum, we must affirm.

(2) On March 13, 2004, Bryant and Marcus Wright robbed a Family Dollar Store in Delmar, Delaware. In the back office of the store, one of the two

men held a gun to an employee's head and threatened to "blow it off" if she looked at him or screamed. They demanded that the employee open the safe and close her eyes, and they then threw her to the ground. After taking the money from the safe, Bryant and Wright bound the employee's legs and hands, and covered her eyes, mouth, and nose with duct tape. The employee survived the incident but has had difficulty recovering emotionally. This robbery was one of three similar robberies of Family Dollar Stores in Delaware and Maryland that Bryant and Wright committed over a six-day period.[1]

(3) Bryant was first convicted in Maryland for charges stemming from the robbery he committed there and sentenced to a total of 53 years at Level V.[2] Bryant then faced his charges in Delaware. Bryant pleaded guilty to one count of Robbery in the First Degree and one count of Possession of a Firearm during the

[1] Bryant and Wright committed a robbery on March 9, 2004 in Maryland and committed robberies on March 11, 2004 and March 13, 2004 in Delaware.

[2] Bryant was sentenced to 47 years for charges from the robbery and 6 years for violation of probation.

Commission of a Felony.[3] The sentencing judge sentenced Bryant to twenty-five years at Level V for each offense, the statutory maximum term.[4]

(4) Bryant claims that his sentence must be reversed because the sentencing judge exhibited a closed mind when sentencing him. Bryant suggests that it is evident that the sentencing judge acted with a closed mind because: (1) the sentencing judge failed to consider the sentence Bryant faced in Maryland for a related robbery; and (2) his codefendant received a significantly more lenient sentence for his participation in the same crime. Moreover, Bryant also suggests that a statement by the sentencing judge at the beginning of sentencing indicates that he had a closed mind.[5]

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[3] Bryant was indicted for Conspiracy in the Second Degree, Kidnapping in the First Degree, Robbery in the First Degree, and two counts of Possession of a Firearm During the Commission of a Felony. The State agreed to *nolle prosse* the charges of Conspiracy in the Second Degree, Kidnapping in the First Degree, and one count of Possession of a Firearm During the Commission of a Felony.

[4] Wright, Bryant's codefendant, pleaded guilty to lesser offenses in both Maryland and Delaware in exchange for his willingness to testify against Bryant. Wright was given a probationary sentence in Maryland. For his criminal actions in Delaware, Wright pleaded guilty to Robbery in the Second Degree and Conspiracy in the Second Degree and was sentenced to two years at Level V and five years of probation.

Defense counsel points out that at best (if Bryant received the earliest possible parole in Maryland), Bryant will not be released from prison until he is 110 years old. Bryant was 35 years old at the time of sentencing.

[5] At the beginning of the sentencing hearing the prosecutor asked the sentencing judge for a one-week continuance because she believed that the presentence report was missing "significant details" including, among others, evidence pertaining to restitution. In response to the prosecutor's request for a continuance, defense counsel stated:

> …Mr. Bryant apparently has a guardianship hearing in Maryland in ten days, that was postponed about a year given all his trial things, for his daughter, who

(5) We review the sentence of a defendant in a criminal case for an abuse of discretion.[6] "Delaware law is well established that appellate review of sentences is extremely limited."[7] "Appellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature."[8] Where the sentence falls within the statutory limits, we consider whether the sentence was imposed on the basis of demonstrably false information or information lacking a minimal indicia of reliability, or whether the sentencing

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> apparently was molested by the mother's boyfriend. If he was in Maryland, he could be present to attempt to get the guardianship back to his father, which is ten days. If we don't do the hearing today, he will not be able to do this through no fault of his own…

The sentencing judge responded:

> Let's go ahead and do this today. I'm not worried about restitution. I mean, it's not that I'm not worried, I don't know that it will ever be an issue. This man is never going to pay these people a penny unless he hits the lottery somehow or they can somehow get money from him. The second thing, I think the presentence report certainly fairly captures what we are dealing with here and the fact, you know, his co-defendant blames him and he blames the co-defendant, I take that for what it's worth. I'm not surprised. *I think whatever sentence I give him will certainly reflect the facts of what he's done in this case and what he's done in the past.*

Bryant suggests that this last sentence shows that the sentencing judge acted with a "closed mind" during sentencing.

6 *Cheeks v. State*, 2000 WL 1508578, at *2 (Del. Supr. Sept. 25, 2000).

7 *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

8 *Id.* (quoting *Ward v. State,* 567 A.2d 1296, 1297 (Del. 1989)).

judge relied upon impermissible factors or exhibited a closed mind.[9] A sentencing judge exhibits a closed mind when he imposes a sentence "based on [a] preconceived bias without consideration of the nature of the offense or the character of the defendant."[10]

(6) At the sentencing hearing, both the prosecutor and defense counsel argued about, and the sentencing judge specifically considered, Bryant's expected release date in Maryland, Bryant's heroin addiction, Bryant's history of committing violent crimes since he was nineteen years old, the devastating impact the offense had on the victim, and the fact that the robbery was one of a string of three similar armed robberies committed by Bryant within six days.

(7) Bryant suggests that the sentencing judge did not truly consider all of the facts brought forth, or exhibited a "closed mind," as evidenced by the sentencing judge's statement at the beginning of sentencing: "I think whatever sentence I give him will reflect the facts of what he's done in this case and what he's done in the past." After carefully reviewing the entire sentencing hearing transcript, we disagree with Bryant's interpretation of the sentencing judge's statement. The sentencing judge's statement did not suggest that the sentencing judge already had a preconceived bias about the sentence he would impose or that

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[9] *Mayes*, 604 A.2d at 842-43; Samuel v. State, 1997 WL 317362, at *4 (Del. Supr. Apr. 16, 1997); *Cheeks*, 2000 WL 1508578, at *2.

[10] *Cheeks*, 2000 WL 1508578, at *2

he would not consider the nature of the offense or Bryant's character. The sentencing judge merely made the statement to indicate that a continuance was not necessary because the presentence report contained enough facts to ensure that Bryant would be sentenced based on the crime he committed and on his character.[11]

(8) Equally unpersuasive is Bryant's other argument – that it is evident that the sentencing judge was acting with a closed mind when sentencing him to the statutory maximum when his codefendant, Wright, received a more lenient sentence. "Disparity in sentence[s] between codefendants as to the same or similar crimes is not a basis for reversal."[12] Moreover, Bryant's argument ignores that his codefendant cooperated with the State and ignores that his codefendant only had a record of misdemeanors before these robberies. In sum, we cannot find anything in the record that suggests that the sentencing judge acted with a "closed mind" when he sentenced Bryant. The sentencing judge cited to Bryant's "terrible criminal record" (Bryant had a "history of committing violent crimes"), the

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[11] Moreover, we note that the sentencing judge was accommodating Bryant by not granting the State's request for a continuance so Bryant would have the opportunity to attend his daughter's guardianship hearing in Maryland. *See Supra* n.4.

[12] *Howell v. State*, 421 A.2d 892, 899 (Del. 1980).

devastating effect of the crime on the victim,[13] and the fact that this crime was merely one of three committed over a six-day period, as a justification for sentencing Bryant to the "upper limit" of the statutory range.[14]

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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[13] Referring to the impact Bryant's action had on the employee, the sentencing judge stated, "She cannot work. I guess she is lucky to be alive. She is lucky she didn't suffocate since she was all taped up. She survived, but is devastated."

[14] Nor do we accept the argument that the sentence constitutes cruel and unusual punishment or is "constitutionally excessive" as it falls within the statutory limits and is not disproportionate to the crimes committed. *Kreisher v. State*, 319 A.2d 31, 32 (Del. 1974)("The sentence is within the limits authorized by the Legislature, and we cannot say that in this case the sentence is constitutionally prohibited as cruel and unusual punishment.")(citing *Williams v. State*, 286 A.2d 756 (1971)("The limits of the term of imprisonment, deemed consonant to fit the nature of the crime, have been matters for legislative determination traditionally. So long as drug offenses are deemed crimes by the General Assembly, terms of imprisonment prescribed therefor by the General Assembly cannot be deemed cruel and inhuman punishment."); *United States v. Wallace*, 269 F.2d 394, 398 (3d Cir. 1959) ("A sentence within the limits prescribed by law for an offense will not *ordinarily* be regarded as cruel or unusual or excessive punishment."); Howard J. Alperin, Annotation, *Length of sentence as violation of constitutional provisions prohibiting cruel and unusual punishment*, 33 A.L.R. 3d 335 (1970)("the cases are legion which hold that regardless of its severity or length, a sentence of imprisonment within the limits of a statute which is in itself valid and constitutional does not *ordinarily* amount to cruel and unusual punishment."). Given Bryant's record, the nature of the offense, and the victim impact, one cannot conclude that Bryant's sentence appears extraordinary in any respect.