

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD TETI,	§	
	§	No. 500, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	No. 0409021321
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 3, 2006
Decided: June 27, 2006
Revised: June 28, 2006

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

ORDER

This 28th day of June 2006, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Defendant-Appellant Richard Teti appeals his sentence of twenty years imprisonment after he pled guilty to a class B felony, punishable by two to twenty-five years imprisonment. On appeal, Teti makes two claims: first, the sentencing judge abused his discretion because he exhibited a closed mind; and second, the State breached its plea agreement, thus voiding the guilty plea. We conclude there is no merit to the appeal and affirm.

(2) Teti pled guilty to one count of Kidnapping First Degree, a class B felony. The State agreed to drop the remaining charges and recommend a sentence of not more than four years in prison followed by probation. Following the pre-sentence investigation, the Superior Court sentenced Teti to twenty years in prison followed by the minimum statutory probationary period of six months. The sentencing guideline in Delaware for Kidnapping First Degree is two to five years at Level V incarceration, with two years minimum mandatory.¹ Teti moved for reconsideration under Superior Court Criminal Rule 35(b) because the imposed sentence exceeded the SENTAC guideline.² The Superior Court denied the motion because it was time-barred.

(3) We review a sentencing order of the Superior Court for abuse of discretion.³ Sentencing guidelines are voluntary and not binding on the sentencing judge.⁴ Nor may they be the basis for appeal.⁵ Delaware law, however, requires a

¹ Sentencing Accountability Commission (“SENTAC”) Truth in Sentencing Benchbook 2003, p.22.

² Del. Super. Ct. Crim. R. 35(b). Reduction of sentence.

The court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed. This period shall not be interrupted or extended by an appeal, except that a motion may be made within 90 days of the imposition of sentence after remand for a new trial or for resentencing. The court may decide the motion or defer decision while an appeal is pending. The court will consider an application made more than 90 days after the imposition of sentence only in extraordinary circumstances or pursuant to 11 Del.C. § 4217....

³ See *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁴ *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

⁵ *Id.* See also *Siple v. State*, 701 A.2d 79, 83 (Del. 1997) (deviation from the SENTAC guidelines cannot form the basis for an appeal). This Court suggested the General Assembly, not this Court, is “the appropriate forum to seek redress from SENTAC’s apparent failure to carry out its

sentence to be a logical and deliberative product of an open-minded jurist.⁶ A sentence within the statutory limits will not be disturbed on appeal in the absence of a showing of vindictiveness, reliance on impermissible factors, or a closed mind,⁷ that is, a showing that sentencing was based on a preconceived bias without consideration of the nature of the offense or the character of the defendant.⁸

(4) Under Delaware Law, first degree kidnapping is a class B felony punishable by 2 to 25 years imprisonment.⁹ Appellate review of a sentence generally ends upon a finding that the sentence is within the statutory limits defined by the legislature.¹⁰ Teti's sentence of twenty years was within the range allowed by law.

(5) “[T]his Court has consistently held that it is without appellate jurisdiction in criminal cases to review challenges on the sole basis that a punishment deviated from the SENTAC sentencing guidelines.”¹¹ Here, a guideline suggested two to five years incarceration for first degree kidnapping, but Teti's sentence was twenty years. Despite the imposition of a sentence greater

legislative mandate to recommend a process for appellate review of deviations from its guidelines.” *Id.*

⁶ *Siple*, 701 A.2d at 86.

⁷ *Id.* at 83.

⁸ *Ellerbe v. State*, 2000 WL 949625, *1 (Del. Supr.).

⁹ 11 Del. C. §§ 783A, 4205(a)(2).

¹⁰ *Ward v. State*, 567 A.2d 1296 (1989).

¹¹ *Siple*, 701 A.2d at 83 (citing *Mayer v. State*, 604 A.2d 839, 845-46 (Del. 1992); *Gaines v. State*, 571 A.2d 765, 767 (Del. 1990); *Ward v. State*, 567 A.2d 1296, 1297-98 (Del. 1989)).

than the State's recommendation in its plea agreement, it is well-settled law that a departure from the guidelines is not a sufficient basis for appeal.¹²

(6) The sentencing judge heard from both the victim and the defendant, considered the character of the defendant and the nature of the offense, and explained his reasoning for not accepting the State's recommendation. Ultimately, the judge enumerated nine aggravating factors in the SENTAC guidelines that support the imposition of Teti's twenty-year sentence: excessive cruelty, prior violent criminal conduct, need for correctional treatment, undue appreciation for the offense, prior abuse of the victim, lack of remorse, lack of amenability to lesser sanctions, and vulnerability of the victim due to mental status then existing and now exacerbated. The record does not support a conclusion that the judge had a closed mind. Rather, it shows that the sentence resulted from the logical and deliberate consideration of the nature of the offense and the character and propensities of the defendant.

(7) Teti argues that the State failed to recommend explicitly a four-year sentence for his crime during sentencing. This assertion ignores the fact that the Court recognized and restated the State's recommendation of four years, and Teti's counsel recognized that the State made its comments in support of this recommendation. Following these statements, Teti addressed the Court and did not

¹² *Id.*

object to any of the statements his attorney, the State, and the Superior Court accepted as being made in support of the recommendation for a four-year sentence. The recommendation within the plea agreement was before the Court without contradiction by the prosecutor. The record does not support Teti's claim that the State breached the plea agreement in this case.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice