

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL DENNISON,	§
	§ No. 27, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. No. IK05-01-0804
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 26, 2006

Decided: July 14, 2006

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

ORDER

This 14th day of July 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael Dennison, filed an appeal from the Superior Court's December 15, 2005 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). We AFFIRM the Superior Court's order insofar as it found that Dennison's 3-year Level V sentence was within the statutorily authorized limits. However, because the Superior Court failed to impose the statutorily

mandated 6-month transition period,¹ this matter must be REMANDED to the Superior Court so that the transition period may be added to Dennison's sentence.

(2) In October 2005, Dennison pleaded guilty to a lesser-included charge of Attempted Burglary in the Third Degree. Dennison was sentenced to 3 years of Level V incarceration. The Superior Court's sentencing order did not include the statutorily mandated 6-month transition period.

(3) In this appeal, Dennison claims that his sentence is illegal because: a) it contains a period of Level V incarceration that exceeds the Sentencing Accountability Commission ("SENTAC") guidelines; and b) it does not contain the statutorily mandated 6-month transition period.

(4) 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 limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.²

¹ Del. Code Ann. tit. 11, § 4204(1).

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

(5) There is no statutory or constitutional right to challenge a sentence solely on the basis that it exceeds the SENTAC guidelines.³ The maximum allowable sentence for third degree burglary, a Class F felony offense, is 3 years of Level V imprisonment.⁴ The maximum allowable sentence for attempted third degree burglary is the same as that for third degree burglary.⁵ As such, Dennison’s 3-year Level V sentence is within the statutory limits. Therefore, Dennison is not entitled to relief under Rule 35(a).

(6) Delaware law requires that, whenever the Superior Court imposes a period of Level V incarceration for one or more offenses that totals 1 year or more, it must include as part of the sentence a period of custodial supervision at Level IV, III or II for a period of not less than 6 months “to facilitate the transition of the individual back into society.”⁶ Dennison is correct that the Superior Court’s sentencing order does not include the statutorily mandated 6-month transition period.

³ *Mayes v. State*, 604 A.2d 839, 844-46 (Del. 1992).

⁴ Del. Code Ann. tit. 11, §§ 824 and 4205(b) (6).

⁵ Del. Code Ann. tit. 11, § 531.

⁶ Del. Code Ann. tit. 11, § 4204(l).

NOW, THEREFORE, IT IS ORDERED that the Superior Court's judgment is AFFIRMED insofar as it found Dennison's 3-year Level V sentence to be within the statutorily authorized limits. However, this matter is hereby REMANDED to the Superior Court so that the transition period mandated by Del. Code Ann. tit. 11, § 4204(l) may be added to Dennison's sentence.

BY THE COURT:

/s/ Carolyn Berger
Justice