

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GILLIAM F. TURNER,	§	
	§	No. 479, 2002
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County in
	§	Cr. ID No. 0006002981A.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 3, 2003
Decided: March 4, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

ORDER

This 4th day of March 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Gilliam F. Turner, filed an appeal from the Superior Court's August 1, 2002 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Turner's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In July 2000, Turner was indicted on the following eleven charges: two counts of Assault in the Second Degree and one count each of Burglary in the Second Degree, Criminal Contempt, Unlawful Imprisonment in the Second Degree, Terroristic Threatening, Endangering the Welfare of a Child, Offensive Touching, Possession of a Deadly Weapon During the Commission of a Felony, Assault in the Third Degree and Criminal Mischief. In June 2001, Turner pleaded guilty to the following six charges: two counts of Assault in the Second Degree, one count each of Burglary in the Second Degree, Assault in the Third Degree, Unlawful Imprisonment in the Second Degree and Criminal Contempt. Turner was sentenced to a total of fifteen years at Level V incarceration, suspended after six years, followed by one year at Level IV Halfway House, followed by decreasing levels of probation.

(3) In this appeal, Turner claims that the Superior Court imposed an illegal sentence that (i) exceeded the sentence agreed-to in his plea agreement and (ii) exceeded the SENTAC guidelines. Turner's contentions are factually and legally erroneous.

(4) Contrary to his contentions, Turner was not sentenced pursuant to Superior Court Criminal Rule 11(e)(1)(c). Moreover, contrary to Turner's contentions, the Superior Court was *not* required to impose only six years at

Level V incarceration, even though the State agreed to such a “cap” in the plea agreement.¹

(5) “Relief under [Superior Court Criminal] Rule 35(a) is available ‘when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy Clause’”² In this case, Turner has not alleged, and the record does not reflect, that the sentence imposed exceeded the statutory maximum for any of his six convictions³ or violated the Double Jeopardy Clause. Moreover, Turner’s claim that his sentence is illegal can not rest solely on the allegation that the sentence exceeds the SENTAC guidelines, as those guidelines are non-binding.⁴

(6) It is manifest on the face of Turner’s opening brief that this appeal is without merit. The issues on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

¹See Del. Super. Cr. Crim. R. 11(e)(1)(B). Nonetheless, the Court notes that the sentence imposed requires that Turner serve only six years at Level V incarceration with the balance to be served at a Level IV Halfway House and probation.

²*Tatem v. State*, 787 A.2d 80, 81 (Del. 2001).

³See Del. Code Ann. tit. 11, §§ 4205, 4206 (2001) (defining sentences).

⁴*Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice