

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK BEDNASH,	§
	§ No. 180, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1002013141
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 18, 2012
Decided: June 19, 2012

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

ORDER

This 19th day of June 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Mark Bednash, filed an appeal from the Superior Court’s April 1, 2011 sentencing order. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in January 2011, Bednash entered a plea of guilty to the charge of Manslaughter. On February 25, 2010, Bednash, who was driving while under the influence of several prescription drugs, jumped the median on Route 13 near Smyrna, Delaware and ran directly into another vehicle, killing both of its occupants. In exchange for the guilty plea, the State dismissed a

second charge of Manslaughter and one count each of Reckless Endangering in the First Degree, Driving While Intoxicated and Failure to Have Proof of Insurance. Bednash was sentenced to 25 years of Level V incarceration, to be suspended after 22 years for decreasing levels of supervision. This is Bednash's direct appeal.¹

(3) In this appeal, Bednash advances several claims, which may fairly be summarized as follows: a) his counsel provided ineffective assistance by failing to ensure that the information contained in the presentence report ("PSI") was accurate and by failing to conduct an independent investigation to identify mitigating factors for sentencing purposes; b) the sentencing judge imposed sentence with a closed mind, as evidenced by the fact that she did not properly consider his mental health problems as a mitigating factor, and based her decision on unreliable information contained in the PSI; and c) his sentence was disproportionate, resulting in a violation of the Eighth Amendment to the United States Constitution.

(4) Bednash's first claim is that his counsel provided ineffective assistance in connection with his guilty plea. It is well-settled that this Court will not entertain a claim of ineffective assistance of counsel that is advanced for the

¹ By Order dated December 14, 2011, the Court granted Bednash's request to proceed *pro se* in this appeal. Supr. Ct. R. 26(d) (iii).

first time on direct appeal.² Because this claim has not yet been adjudicated by the Superior Court, we decline to address it in this proceeding.

(5) Bednash's second claim is that the sentencing judge abused her discretion by imposing sentence with a closed mind and by basing her decision on unreliable information in the PSI. The sentencing judge imposes sentence with a closed mind when the sentence is based upon a preconceived bias without consideration of the nature of the offense or the character of the defendant.³ The sentencing judge must have an open mind for receiving all information bearing on the question of mitigation.⁴ The Court will not find an abuse of discretion on the part of the sentencing judge unless it is clear that he or she relied on impermissible factors or exhibited a closed mind.⁵

(6) Bednash's claim of abuse of discretion on the part of the sentencing judge is belied by the transcript of the sentencing hearing, which reflects that the judge considered evidence of Bednash's mental health problems and his history of addiction as possible mitigating factors. However, instead of viewing Bednash as a victim, the judge held him responsible for failing to take advantage of the opportunities he had to address his addictions. Merely because the judge did not accept Bednash's interpretation of his situation does not mean that she viewed the

² *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985).

³ *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).

⁴ *Shelton v. State*, 744 A.2d 465, 513 (Del. 1999).

⁵ *Weston v. State*, 832 A.2d at 746.

evidence with a closed mind. Moreover, there is no evidence that the judge relied on inaccurate or unreliable information.⁶ In the absence of any evidence of an abuse of discretion, we conclude that Bednash's first claim is without merit.

(7) Bednash's third, and final, claim is that his sentence was disproportionate, resulting in a violation of the Eighth Amendment to the United States Constitution. The Eighth Amendment prohibits those punishments that are either disproportionate to the crime committed or excessive.⁷ This Court has ruled that proportionality review is restricted to those rare cases in which a threshold comparison of the crime and the sentence leads to an inference of gross disproportionality.⁸

(8) The General Assembly has determined that a Class B felony such as Manslaughter merits a penalty of from 2 to 25 years at Level V. As such, Bednash's sentence was within the limits set by the Legislature.⁹ Moreover, given the circumstances of Bednash's crime, which involved the violent taking of two innocent lives, we find no disproportionality in the sentence imposed. We, therefore, conclude that Bednash's third claim also is without merit.

⁶ To the extent that Bednash faults his counsel with failing to assure the accuracy of the information in the PSI, that claim will not be addressed in this proceeding.

⁷ *Atkins v. Virginia*, 536 U.S. 304, 311 n.7 (2002).

⁸ *Crosby v. State*, 824 A.2d 894, 908 (Del. 2003) (citing *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991)).

⁹ *Crosby v. State*, 824 A.2d at 912-13.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice