

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES B. SANDERS, JR.,	§	
	§	No. 578, 1999
Defendant Below,	§	
Appellant,	§	Court Below -- Superior Court
	§	of the State of Delaware, in and
v.	§	for Kent County.
	§	
STATE OF DELAWARE,	§	Cr. A. Nos. K94-01-0082I
	§	through 0085I & K94-01-0265I.
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9312012607

Submitted: February 4, 2000

Decided: March 8, 2000

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

**O R D E R**

This 8th day of March 2000, upon consideration of the appellant's opening brief and appendix and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In 1994, the appellant, Charles B. Sanders, Jr. ("Sanders"), was convicted by a Superior Court jury of First Degree Robbery, Second Degree Kidnapping, First Degree Burglary, Second Degree Assault, and Attempted

Sexual Extortion. Sanders was sentenced to forty years in prison. Sanders' conviction was affirmed on direct appeal.<sup>1</sup>

(2) To date, Sanders has filed four motions for postconviction relief pursuant to Superior Court Criminal Rule 61. The Superior Court has denied all of Sanders' postconviction motions. Sanders has appealed three of the Superior Court's four decisions denying postconviction relief.<sup>2</sup> On appeal, this Court has affirmed the decisions of the Superior Court.<sup>3</sup>

(3) On July 26, 1999 and again on October 1, 1999, Sanders filed motions for modification of sentence. Sanders alleged that his 1994 sentence exceeded the Sentence Accountability Commission ("SENTAC") sentencing

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<sup>1</sup> *Sanders v. State*, Del. Supr., No. 256, 1994, Berger, J., 1995 WL 264532 (May 1, 1995) (ORDER).

<sup>2</sup> Sanders has not appealed the Superior Court's order of November 19, 1999, that summarily dismissed Sanders' most recent postconviction motion.

<sup>3</sup> *See Sanders v. State*, Del. Supr., No. 76, 1996, Walsh, J., 1996 WL 209901 (April 24, 1996) (ORDER) (denying Sanders' first motion for postconviction relief and motion for new trial); *see Sanders v. State*, Del. Supr., No. 556, 1997, Holland, J., 1998 WL 138933 (Feb. 27, 1998) (ORDER) (denying Sanders' second motion for postconviction relief); *see Sanders v. State*, Del. Supr., No. 108, 1999, Walsh, J., 1999 WL 507240 (June 9, 1999) (ORDER) (denying Sanders' third motion for postconviction relief).

guidelines and violated 11 *Del. C.* § 4204(m) because the sentencing judge failed to state on the record his reasons for imposing an enhanced sentence.<sup>4</sup>

(4) The Superior Court considered Sanders' motions for modification of sentence, the presentence report, which set forth "substantial aggravating factors," the jury's guilty verdict, and the sentence imposed upon Sanders. Thereafter, by order dated November 19, 1999, the Superior Court denied Sanders' motions for modification of sentence. The Superior Court held that a reduction or modification of sentence was "inappropriate under the circumstances." The Superior Court also found that the motions for modification of sentence were time-barred. This appeal followed.

(5) The Superior Court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed. "Only in extraordinary circumstances will the court consider an application made more than 90 days after the imposition of sentence."<sup>5</sup>

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<sup>4</sup> 11 *Del. C.* 4204(m) provides that "[w]henver a court imposes a sentence inconsistent with the presumptive sentences adopted by the Sentencing Accountability Commission, such court shall set forth on the record its reasons for imposing such penalty."

<sup>5</sup> Super. Ct. Crim. R. 35(b).

(6) Sanders' motions for modification of sentence were filed in 1999, more than five years after Sanders' sentencing. In his motions, Sanders contended that he was unable to meet the 90-day filing deadline because, during that time, he was on "strong mind[-]altering" prescription medication that rendered him "mentally incompetent" and "unable to comply" with the deadline.

(7) Sanders' claim of incapacity to justify his delay in requesting a reduction of sentence is not supported by the record. Indeed, between June 10, 1994 and September 8, 1994, the 90-day time period in which Sanders' counsel could have filed a motion for reduction of sentence, the Superior Court record reflects that Sanders filed several *pro se* documents, including a motion for postconviction relief.

(8) When reviewing a challenge to a criminal sentence, this Court has held that "[a]ppellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature."<sup>6</sup> In this case, it is clear that the Superior Court sentenced Sanders within the sentencing range authorized by the legislature.

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<sup>6</sup> *Mayes v. State*, Del. Supr., 604 A.2d 839, 842 (1992) (quoting *Ward v. State*, Del. Supr., 567 A.2d 1296, 1297 (1989)).

(9) Under Delaware law, First Degree Robbery is a Class B felony with an authorized maximum punishment of up to 20 years in prison.<sup>7</sup> Sanders was sentenced on this offense to 20 years in prison. Second Degree Kidnapping and First Degree Burglary are both Class C felonies with an authorized punishment of up to ten years in prison.<sup>8</sup> Sanders was sentenced to ten years in prison for each of these offenses. Second Degree Assault is a Class D felony with an authorized maximum punishment of up to eight years in prison.<sup>9</sup> Sanders was sentenced to two years in prison, suspended for two years at a Level IV halfway house. Attempted Sexual Extortion is a Class E felony with an authorized maximum punishment of up to five years in prison.<sup>10</sup> For this offense, Sanders was sentenced to three years in prison, suspended for two years at Level III probation.

(10) The Superior Court legally could have sentenced Sanders to the maximum penalty of 53 years in prison for his crimes, without suspension of any part of the sentence. The Superior Court's failure to follow the

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<sup>7</sup> 11 *Del. C.* §§ 832, 4205(b)(2).

<sup>8</sup> 11 *Del. C.* §§ 783, 826, 4205(b)(3).

<sup>9</sup> 11 *Del. C.* §§ 612, 4205(b)(4).

<sup>10</sup> 11 *Del. C.* §§ 531, 776, 4205(b)(5).

nonbinding SENTAC guidelines, or to state its reasons for not following the guidelines, is simply no basis for appeal, as this Court has held.<sup>11</sup>

(11) It is manifest on the face of Sanders' opening brief that the appeal is without merit. The issues raised on appeal are clearly controlled by settled principles of law, and there was no error of law below. To the extent the appeal presents issues of judicial discretion, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm be, and the same hereby is, GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh  
Justice

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<sup>11</sup> *Mayes v. State*, 604 A.2d at 846.