

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**T. HENLEY GRAVES**  
*RESIDENT JUDGE*

**SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947**

December 21, 2006

N440 - State Mail  
Michael B. Quandt  
SBI  
Sussex Correctional Institution  
P. O. Box 500  
Georgetown, DE 19947

**RE: Michael B. Quandt - Manslaughter  
Criminal Action No. 02-12-0028 - Defendant ID No. 0211001904**

Dear Mr. Quandt:

The Court is in receipt of your Motion to Correct an Illegal Sentence. For the reasons stated below, your Motion is denied.

**BACKGROUND**

Following negotiations, you entered a guilty plea to manslaughter as a lesser included offense of murder in the first degree. With the benefit of a pre-sentence investigation, you were sentenced on January 23, 2004. The sentence was ten years; after serving 7 years under §4204(k), the balance was suspended for three years Level 3 probation. Several months later, the defense filed a Motion asking the Court to review the sentence because 11 Del. C. §4204(k) was not available to the Court for a sentence of seven years when the maximum possible sentence was ten years.

On May 14, 2004, the Court noted same and resentenced the Defendant. The sentence imposed on May 14, 2004 was for a period of ten years; after serving 8 years, the balance was suspended for two years Level 3 probation. There was no §4204(k) included on the May 14, 2004 sentence.

On December 15, 2006, the Court received the present Motion seeking a correction of the sentence imposed on May 14, 2004.

The first complaint is that the Court illegally enhanced or increased your sentence following your successful challenge to the January 23, 2004 sentence. The January 23, 2004 sentence was an illegal sentence. The Court was prohibited from imposing 11 Del. C. §4204(k). On May 14, 2004, the Court corrected the illegal sentence by striking it and imposing another sentence. The sentenced in January 2004 was for a period

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of seven years under §4204(k), which meant you had to do the entire sentence day-for-day. When I imposed the sentence in May, 2004, I took into consideration the amount of time that you had been sentenced to in January, i.e., that period of time that I thought was appropriate for you to serve at Level 5, and imposed a sentence of 8 years Level 5. This being subject to good time credits resulted in a sentence in which you could be released as early as 6 years. Thus the second sentence, in reality, decreased your incarceration at Level 5. The May 2004 sentence was not in any way done to be vindictive concerning your filing the Motion to Correct the January sentence. The May sentence was the Court's attempt to match the Court's intent of an appropriate sentence imposed in January. The result is that the May sentence is more beneficial to you than 7 years under §4204(k). Therefore, I conclude that I have not illegally enhanced your sentence.

Your next complaint is that the Court considered the Sentac aggravating factors in imposing the sentence. You argue that the Court was barred by *Apprendi*<sup>1</sup> from considering the aggravating factors because only a jury should be able to apply the aggravators and increase the sentence. You are mistaken. Once you were convicted of manslaughter, the sentence could be up to the statutory amount of 10 years. The Sentac mitigators and aggravators are sentencing tools appropriately used by the sentencing judge. Since your sentence was not enhanced above the statutory limitation of 10 years for the offense of manslaughter, your argument fails.

Your final argument is that the Court exceeded the two-year guidelines for a felony for a probationary period for a crime of violence. This argument fails because the sentence imposed in May of 2004 only has two years of probation following the period of Level 5 incarceration.

### **SUMMARY**

For the aforementioned reasons, the Defendant's Motion for Correction of an Illegal Sentence is denied.

**IT IS SO ORDERED.**

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary  
Department of Justice

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<sup>1</sup>*Apprendi v. New Jersey*, 530 U.S. 466 (2000).