

SUPREME COURT OF THE STATE OF DELAWARE

Dignan v. State

Dignan v. State · No. No. 77, 2019 · Decided April 12, 2019

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s denial of Frank Dignan’s motion to correct an allegedly illegal sentence for second-degree burglary. The Court held that 11 Del. C. § 825 establishes minimum, not maximum, sentences, and that the eight-year Level V sentence was authorized for a Class D felony under 11 Del. C. § 4205.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Vaughn, Justice; Seitz, Justice; Traynor, Justice
JURISDICTION	Delaware
DECIDED	April 12, 2019
DOCKET	No. 77, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dignan appealed the Superior Court's denial of his motion to correct an allegedly illegal sentence imposed after his guilty plea. The State moved to affirm under the Delaware Supreme Court's summary affirmance procedure.
STANDARD OF REVIEW	The Court considered whether it was manifest on the face of the appellant's opening brief that the appeal was without merit.
PRECEDENTIAL VALUE	Published Delaware Supreme Court per curiam order; the text does not separately state its precedential status.
PARTIES	Frank Dignan v. State of Delaware

TOPICS

- sentencing
- sentence modification
- statutory interpretation
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether Dignan's eight-year Level V sentence for second degree burglary was illegal because 11 Del. C. § 825 allegedly limited the sentence to a maximum of three years.
2. Whether the Superior Court properly denied Dignan's motion to correct an illegal sentence.

HOLDINGS

1. Section 825 establishes the minimum sentence for second degree burglary; it does not establish the maximum sentence. Because second degree burglary is a class D felony, the maximum permissible sentence under 11 Del. C. § 4205(b)(4) is eight years at Level V.
2. Dignan's sentence was not illegal because the eight-year Level V sentence for second degree burglary was authorized by law.

KEY QUOTATIONS

“But, this section sets out the minimum sentence to which one can be sentenced. Section 4205 of Title 11 sets out the maximum sentence one can receive for each felony class.” (3)

“Accordingly, we find no merit to Dignan’s argument that the Superior Court imposed an illegal sentence for his conviction of second degree burglary.” (3)

FACTUAL BACKGROUND

Dignan pleaded guilty to three counts of second degree burglary, one count of second degree forgery, three counts of second degree conspiracy, and two misdemeanor theft counts. In exchange, the State entered a nolle prosequi on numerous other charges. The Superior Court sentenced him to eight years at Level V for one second degree burglary conviction, with additional consecutive and suspended sentences on the other charges.

PROCEDURAL HISTORY

Dignan pleaded guilty to nine charges resolving five cases on March 1, 2012, including three counts of second degree burglary. The Superior Court imposed, among other sentences, eight years at Level V incarceration for one burglary count. After several unsuccessful motions to modify his sentence, Dignan filed a January 18, 2019 motion to correct an illegal sentence, arguing that 11 Del. C. § 825 limited his sentence for second degree burglary to three years. The Superior Court denied the motion, and the Delaware Supreme Court affirmed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE FRANK DIGNAN, § §
Defendant Below, § No. 77, 2019 Appellant, § § Court Below–Superior Court v. § of the State of

Delaware § STATE OF DELAWARE, § Cr. ID No. 1104022622 (N) § Plaintiff Below, § Appellees. § § Submitted: March 11, 2019 Decided: April 12, 2019 Before VAUGHN, SEITZ, and TRAYNOR, Justices. ORDER Upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that: (1) The appellant, Frank Dignan, appeals a sentence the Superior Court imposed upon him for second degree burglary.

The State has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Dignan's opening brief that his appeal is without merit. We agree and affirm. (2) The record reflects that Dignan pleaded guilty to nine charges in order to resolve five pending cases on March 1, 2012. Specifically, Dignan pleaded guilty to three counts of second degree burglary, one count of second degree forgery, three counts of second degree conspiracy, and two counts of misdemeanor theft.

In exchange for his plea, the State entered a nolle prosequi on numerous other charges. Following a presentence investigation, the Superior Court sentenced Dignan as follows: on the first burglary charge, eight years at Level V incarceration ("Level V"); on the second burglary charge, one year at Level V, to be served consecutively; and, on the third burglary charge, three years at Level V, suspended after one year for decreasing levels of supervision, to be served consecutively.

On each of remaining charges, the Superior Court sentenced Dignan to one year at Level V, suspended for Level II probation. (3) On April 22, 2015, Dignan filed a motion for modification of his sentence. The Superior Court denied the motion, finding it time-barred and concluding the sentence was appropriate for the reasons stated at sentencing.

On April 13, 2018, Dignan moved the Superior Court to modify his sentence order to ensure he was given the opportunity to participate in a substance abuse program. After seeking input from the Department of Corrections (DOC), the Superior Court declined to amend the order.

On October 30, 2018, Dignan yet again moved for the modification of his sentence to accommodate his physical ailments. The Superior Court denied the motion, noting DOC was able to address any medical issues Dignan may have. 2 (4) On January 18, 2019, Dignan filed a motion to correct an illegal sentence.

The Superior Court denied the motion, finding the sentence was imposed pursuant to a plea agreement whereby Dignan acknowledged in open court that he was aware of the possible penalties he faced; the motion was time-barred because it was filed more than 90 days after the imposition of the sentence; no new information had been provided to the sentencing court that would warrant a reduction or modification of the sentence; and Dignan's sentence for second degree burglary was authorized by law.

This appeal followed. (5) Dignan argues his sentence to eight years at Level V for second degree burglary is illegal because it exceeds the maximum penalty that may be imposed under section 11

Del. C. § 825. Section 825 provides, in relevant part: Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the second degree shall receive a minimum sentence of: (1) One year at Level V; or (2) Three years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years as of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.¹ 1 11 Del.

C. § 825(b) (emphasis added). ³ Dignan believes this language limits the sentence he can receive on a second degree burglary conviction to a maximum of three years. But, this section sets out the minimum sentence to which one can be sentenced. Section 4205 of Title 11 sets out the maximum sentence one can receive for each felony class. Burglary second is a class D felony,² for which a person can be sentenced up to eight years at Level V.³ Accordingly, we find no merit to Dignan's argument that the Superior Court imposed an illegal sentence for his conviction of second degree burglary.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Collins J. Seitz, Jr. Justice 2 Id. ("Burglary in the second degree is a class D felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class C felony."). ³ 11 Del.

C. § 4205(b)(4). ⁴