

SUPREME COURT OF DELAWARE

Quandt v. State

933 A.2d 1250 (Del. 2007) · No. No. 28, 2007 · Decided August 3, 2007

SUMMARY

The Delaware Supreme Court affirmed the denial of Michael B. Quandt’s motion to correct an illegal sentence under Superior Court Criminal Rule 35. The Court held that his challenges were untimely claims concerning the manner of sentencing, lacked substantive merit, and that his probation claim was moot because the sentence had been corrected.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Myron T. Steele, Chief Justice; Steele, Chief Justice; Holland, Justice; Ridgely, Justice
JURISDICTION	Delaware
DECIDED	August 3, 2007
DOCKET	No. 28, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court of Delaware's denial of a motion for correction of an illegal sentence under Superior Court Criminal Rule 35.
STANDARD OF REVIEW	The court reviewed whether the sentence was illegal under Rule 35 and whether the Superior Court properly denied relief. Rule 35(a) relief is limited to correction of an illegal sentence, while challenges to a sentence imposed in an illegal manner are subject to Rule 35(b)'s time limitation.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential
PARTIES	Michael B. Quandt v. State of Delaware

TOPICS

- sentencing
- sentence modification
- post-conviction relief
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Quandt's challenges to his sentence constituted claims of an illegal sentence cognizable at any time under Rule 35(a), or claims that the sentence was imposed in an illegal manner and therefore time-barred under Rule 35(b).
2. Whether departure from Delaware's Truth-in-Sentencing guidelines provided a basis for appellate relief and whether Apprendi and Blakely affected Delaware's voluntary, non-binding sentencing guidelines.
3. Whether the sentencing court improperly increased Quandt's sentence on resentencing absent vindictiveness.
4. Whether Quandt was illegally sentenced to three years of probation when the corrected sentence provided only two years, and whether that issue remained justiciable.

HOLDINGS

1. Claims that a sentence was imposed in an illegal manner, rather than claims that the sentence itself was legally unauthorized or otherwise intrinsically illegal, are subject to Rule 35(b)'s 90-day limitation. Quandt's claims were time-barred, and no extraordinary circumstances justified review.
2. A Superior Court decision to depart from Delaware's TIS guidelines is not, by itself, a basis for appeal. Apprendi and its progeny do not affect Delaware's sentencing scheme because the TIS guidelines are voluntary and non-binding.
3. A sentencing judge may impose a harsher sentence on resentencing provided that vindictiveness played no part in the decision. The record showed no vindictiveness and instead reflected an intent to implement the original sentencing plan.
4. The challenge to a three-year probation term was moot because the Superior Court had already corrected the sentence to provide only two years of probation, and no remand was necessary.

KEY QUOTATIONS

"The narrow function of Rule 35 is to permit correction of an illegal sentence." (¶ 5)

"The sentencing judge was not prohibited from imposing a harsher sentence on Quandt, as long as vindictiveness played no part in the decision to impose the harsher sentence." (¶ 8)

FACTUAL BACKGROUND

In November 2003, Quandt entered a no contest plea to manslaughter, a lesser-included offense of first-degree intentional murder. The Superior Court initially imposed ten years at Level V, suspended after seven years, and stated that the Level V term would not be subject to early release. In 2004, the Superior Court corrected that provision and resentenced Quandt to ten years at Level V, suspended after eight years for two years of probation, with credit for 445 days previously served. Quandt challenged the sentence as exceeding the TIS guidelines, impermissibly harsher after resentencing, and imposing too much probation.

PROCEDURAL HISTORY

Quandt entered a no contest plea to manslaughter and was sentenced by the Superior Court. After the court corrected the original sentence under Rule 35(a), Quandt later filed another motion challenging the sentence, which the Superior Court denied on December 21, 2006. The Supreme Court of Delaware affirmed.

DISPOSITION

affirmed

CASES CITED

- *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998)
- *Winn v. State*, Del. Supr., No. 521, 1997, Veasey, C.J. (July 6, 1998)
- *Siple v. State*, 701 A.2d 79, 82-83 (Del. 1997)
- *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
- *Blakely v. Washington*, 542 U.S. 296 (2004)
- *Benge v. State*, Del. Supr., No. 137, 2004, Holland, J. (Nov. 12, 2004)
- *United States v. Goodwin*, 457 U.S. 368, 373-74 (1982)

OPINION

PER CURIAM.

MICHAEL B. QUANDT, Defendant Below-Appellant, v. STATE OF DELAWARE, Plaintiff Below-Appellee. No. 28, 2007. Supreme Court of Delaware Submitted: June 22, 2007. Decided: August 3, 2007. Before STEELE, Chief Justice, HOLLAND and RIDGELY, Justices. ORDER MYRON T. STEELE, Chief Justice. This 3rd day of August 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that: (1) The defendant-appellant, Michael B. Quandt, filed an appeal from the Superior Court's December 21, 2006 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35.

We find no merit to the appeal. Accordingly, we AFFIRM. (2) In November 2003, Quandt entered a no contest plea to the charge of Manslaughter, a lesser-included offense of Intentional Murder in the First Degree. The Superior Court sentenced Quandt to 10 years at Level V incarceration, to be suspended after 7 years for 3 years of decreasing levels of supervision.

The sentencing order provided that Quandt's 7 years at Level V were to be served without any chance of early release.[1] (3) In April 2004, Quandt filed a motion for correction of an illegal sentence pursuant to Rule 35.

The Superior Court granted the motion on May 14, 2004, correcting its sentencing order by removing the provision that Quandt's Level V sentence would not be subject to any form of early release. The Superior Court re-sentenced Quandt to 10 years at Level V, to be suspended after 8

years for 2 years of probation, and gave Quandt credit for 445 days of Level V time previously served.

(4) In this appeal, Quandt claims that a) his sentence exceeds the TIS guidelines; b) his sentence was impermissibly increased at re-sentencing; and c) he should not have been sentenced to 3 years of probation. (5) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time."

The narrow function of Rule 35 is to permit correction of an illegal sentence.[2] Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.[3] A sentence also is illegal when it is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.[4] While the Superior Court may correct an illegal sentence at any time, it may only correct a sentence imposed in an illegal manner within 90 days of imposition of the sentence.[5] The Superior Court may consider an application filed more than 90 days of the imposition of sentence only in extraordinary circumstances.[6] (6) Because Quandt's claims are, in essence, claims that his sentence was imposed in an illegal manner, they are time-barred under Rule 35(b).

Moreover, we find no extraordinary circumstances in this case that would permit our consideration of those claims. (7) Quandt's claims are substantively without merit in any case. The decision of the Superior Court to depart from the TIS guidelines is not, in and of itself, a basis for appeal.[7] Moreover, Apprendi and its progeny[8] do not impact Delaware's sentencing scheme because the TIS guidelines are voluntary and non-binding.[9] (8) Quandt's claim that the sentencing judge improperly increased his sentence also is unavailing.

The sentencing judge was not prohibited from imposing a harsher sentence on Quandt, as long as vindictiveness played no part in the decision to impose the harsher sentence.[10] There is no indication on the record in this case that the sentencing judge acted out of vindictiveness in imposing Quandt's sentence. Rather, the record reflects that the sentencing judge's intent was to implement his original sentencing plan.[11] (9) Quandt's final claim is that he was illegally sentenced to 3 years of probation rather than the statutory maximum of 2 years.

Because the Superior Court corrected Quandt's sentence to provide for only 2 years of probation, this claim is moot. Moreover, while Quandt urges this Court to consider this claim in case of a remand, there is no need to do so since the matter is not being remanded. NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. NOTES [1] Del.

Code Ann. tit. 11, § 4204(k). [2] Brittingham v. State, 705 A.2d 577, 578 (Del. 1998). [3] Id. [4] Id. [5] Super. Ct. Crim. R. 35(b); Winn v. State, Del. Supr., No. 521, 1997, Veasey, C.J. (July 6, 1998). [6] Id. [7] Siple v. State, 701 A.2d 79, 82-83 (Del. 1997).

[8] *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, 542 U.S. 296 (2004). [9] *Benge v. State*, Del. Supr., No. 137, 2004, Holland, J. (Nov. 12, 2004). [10] *United States v. Goodwin*, 457 U.S. 368, 373-74 (1982).

[11] In fact, as the Superior Court noted in its December 21, 2006 decision, assuming that Quandt will earn good time credits, he could actually spend less time at Level V under the new sentence than under the sentence that was originally imposed.