

SUPREME COURT OF THE STATE OF DELAWARE

Rollins v. State

Rollins · No. No. 401, 2021 · Decided January 14, 2022

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s denial of Duane L. Rollins’s motion for correction or modification of sentence. The Court held that Rollins was eligible for habitual-offender sentencing and that his sentence-modification request was untimely under Superior Court Criminal Rule 35(b); it also held that relief under 11 Del. C. § 4217 requires an application by the Department of Correction, which was not required to apply.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Seitz, Chief Justice; Valihura, Justice; Vaughn, Justice
JURISDICTION	Delaware
DECIDED	January 14, 2022
DOCKET	No. 401, 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rollins appealed the Superior Court's denial of his motion for correction or modification of sentence. The Delaware Supreme Court considered the State's motion to affirm and affirmed the judgment below.
STANDARD OF REVIEW	The denial of a motion for reduction or modification of sentence under Superior Court Criminal Rule 35(b) is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Duane L. Rollins v. State of Delaware

TOPICS

- appellate procedure
- sentencing
- post-conviction relief
- criminal procedure
- statutory interpretation

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the Superior Court abused its discretion by treating Rollins's filing as a motion under Superior Court Criminal Rule 35(b) and denying it as untimely.
2. Whether Rollins was ineligible for habitual-offender sentencing because strangulation was not listed as a violent felony under 11 Del. C. § 4201(c) at the time of his conviction.
3. Whether Rollins was entitled to sentence modification under 11 Del. C. § 4217 absent an application from the Department of Correction.

HOLDINGS

1. The Superior Court did not abuse its discretion by treating Rollins's letter as a motion for modification or reduction of sentence under Superior Court Criminal Rule 35(b) and denying it as untimely.
2. Rollins was eligible for habitual-offender sentencing despite strangulation not being listed as a violent felony under § 4201(c). The omission meant only that the Superior Court was not required to impose a five-year minimum mandatory Level V sentence for the second strangulation count; it did not make Rollins ineligible for habitual-offender status.
3. Rollins was not entitled to relief under § 4217 because sentence modification under that provision may be sought solely on the basis of an application filed by the Department of Correction, and the Department was not required to file such an application.

KEY QUOTATIONS

“Section 4217 provides for a modification of sentence “solely on the basis of an application filed by the Department of Correction.”” (3)

FACTUAL BACKGROUND

Rollins pleaded guilty to two counts of strangulation in exchange for dismissal of multiple other charges and an agreement that the State would seek habitual-offender sentencing on only one count. The Superior Court imposed a ten-year habitual-offender sentence on one count and a five-year sentence, suspended after two years, on the other. In 2021, Rollins argued that strangulation was not a violent felony at the relevant time and therefore could not support habitual-offender sentencing, and he sought relief under 11 Del. C. § 4217.

PROCEDURAL HISTORY

Rollins pleaded guilty to two counts of strangulation and was sentenced in January 2015, including a ten-year habitual-offender sentence on one count and a five-year sentence suspended after two years on the other. The Delaware Supreme Court affirmed his conviction and sentence on direct appeal and later affirmed denial of postconviction relief. In 2021, Rollins sought immediate release and argued that his sentence was illegal and that the Department of Correction improperly denied sentence modification under 11 Del. C. § 4217. The Superior Court treated his filing as a motion under Superior Court Criminal Rule 35(b), denied it as untimely, and Rollins appealed.

DISPOSITION

affirmed

CASES CITED

- Rollins v. State, 2015 WL 5032041 (Del. Aug. 25, 2015)
- Rollins v. State, 2018 WL 5044333 (Del. Oct. 16, 2018)
- Bengé v. State, 101 A.3d 973, 976-77 (Del. 2014)
- Patton v. State, 2021 WL 4936949, at *2 (Del. Oct. 21, 2021)
- King v. State, 2015 WL 317128, at *2 (Del. Jan. 23, 2015)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE DUANE L. ROLLINS, § § Defendant Below, § No. 401, 2021 Appellant, § § Court Below—Superior Court v. § of the State of Delaware § STATE OF DELAWARE, § Cr. ID No. 1212010904 (N) § Plaintiff Below, § Appellee. § Submitted: December 23, 2021 Decided: January 14, 2022 Before SEITZ, Chief Justice; VALIHURA and VAUGHN, Justices ORDER After consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, the Court concludes that: (1) The appellant, Duane L. Rollins, filed this appeal from the Superior Court's denial of his motion for correction or modification of sentence.

The State has moved to affirm the judgment below on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm. (2) Rollins pleaded guilty to two counts of strangulation under 11 Del. C. § 607.

In exchange, the State agreed to dismiss multiple other charges against Rollins and that it would seek habitual-offender sentencing on one of the counts of strangulation but not the other. In January 2015, the Superior Court sentenced Rollins as follows: for one count of strangulation, under the habitual-offender statute,¹ to ten years of incarceration, and for the other count of strangulation, to five years of incarceration, suspended after two years for decreasing levels of supervision.

This Court affirmed on appeal.² (3) On August 25, 2021, Rollins filed a letter in the Superior Court in which he asked for immediate release, arguing that his sentence is illegal and that the Department of Correction had improperly denied his request for sentence modification under 11 Del. C. § 4217.

The Superior Court treated the letter as a motion for sentence modification or reduction under Superior Court Criminal Rule 35(b) and denied the motion on November 3, 2021. Rollins has appealed to this Court. (4) On appeal, Rollins argues that strangulation was not a violent felony

under Title 11 at the time that he was convicted, so he was not subject to habitual-offender sentencing under 11 Del.

C. § 4214(a). He therefore contends that the Superior Court abused its discretion by denying him relief under Section 4217. (5) This Court has previously rejected the argument that Rollins was not subject to habitual-offender sentencing because strangulation was not listed as a 1 11 Del. C. § 4214(a). 2 Rollins v. State, 2015 WL 5032041 (Del. Aug. 25, 2015).

See also Rollins v. State, 2018 WL 5044333 (Del. Oct. 16, 2018) (affirming denial of motion for postconviction relief). 2 violent felony in 11 Del. C. § 4201(c).³ The Superior Court therefore did not abuse its discretion by considering the motion under Superior Court Criminal Rule 35(b) and denying it as untimely.⁴ (6) Moreover, the Superior Court did not err by denying Rollins's request for relief under Section 4217.

Section 4217 provides for a modification of sentence "solely on the basis of an application filed by the Department of Correction."⁵ The Department of Correction was not to required to apply for modification of Rollins's sentence under Section 4217.⁶ 3 See Rollins, 2015 WL 5032041, at *4 ("To the extent Rollins is arguing that he could not be declared a habitual offender because Strangulation is not a violent felony under Section 4201(c), he is incorrect.

The fact that Strangulation was not a violent felony under Section 4201(c) meant that the Superior Court was not required to impose a minimum mandatory Level V sentence of five years for the second count of Strangulation under Section 4214(a), not that Rollins was ineligible for habitual offender status."). 4 See DEL. SUPER. CT. CRIM. R. 35(b) (providing that the court will consider a motion for modification or reduction of sentence "made more than 90 days after the imposition of sentence only in extraordinary circumstances or pursuant to 11 Del.

C. § 4217"). See also Benge v. State, 101 A.3d 973, 976-77 (Del. 2014) (stating that this Court reviews the Superior Court's denial of a motion for reduction of sentence under Rule 35(b) for abuse of discretion). 5 11 Del. C. § 4217(b). 6 See Patton v. State, 2021 WL 4936949, at *2 (Del. Oct. 21, 2021) ("As the Superior Court recognized, DOC is not required to apply for modification of Patton's (or any other inmate's) sentence under § 4217."); King v. State, 2015 WL 317128, at *2 (Del.

Jan. 23, 2015) ("It is within the discretion of the Department of Correction to apply for modification of an inmate's sentence under Section 4217."). 3 NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Karen L. Valihura Justice 4