

# SUPREME COURT OF THE STATE OF DELAWARE

## Boone v. State

No. 332, 2018 (Del. Oct. 9, 2018) · No. No. 332, 2018 · Decided October 9, 2018

### SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s denial of Kevin H. Boone’s motion to correct an allegedly illegal sentence imposed after a violation of probation. The Court held that the sentence was authorized by law, that alleged violations of SENTAC guidelines did not establish judicial bias, and that the motion could not be used to challenge alleged errors at the probation-violation hearing.

### CASE DETAILS

|                       |                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Delaware                                                                                                                                                                |
| WRITING FOR THE COURT | Chief Justice Strine; Justice Valihura; Justice Vaughn                                                                                                                                                |
| JURISDICTION          | Delaware                                                                                                                                                                                              |
| DECIDED               | October 9, 2018                                                                                                                                                                                       |
| DOCKET                | No. 332, 2018                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Appeal from the Superior Court's denial of a motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a), following a violation-of-probation sentencing.                    |
| STANDARD OF REVIEW    | The appeal was affirmed because it was manifest on the face of the opening brief that it was without merit; the court applied the narrow scope of a Rule 35(a) motion to correct an illegal sentence. |
| PRECEDENTIAL VALUE    | Published Delaware Supreme Court order; precedential status is not expressly stated in the opinion text.                                                                                              |
| PARTIES               | Kevin H. Boone v. State of Delaware                                                                                                                                                                   |

### TOPICS

[post-conviction relief](#) [sentencing](#) [probation](#) [sentencing guidelines](#) [appellate procedure](#)

### PRACTICE AREAS

[criminal procedure](#) [sentencing](#) [probation](#) [post-conviction relief](#) [appellate procedure](#)

## QUESTIONS PRESENTED

1. Whether Boone could use a motion to correct an illegal sentence under Superior Court Criminal Rule 35(a) to challenge alleged errors in the violation-of-probation adjudication and hearing.
2. Whether Boone's violation-of-probation sentence was illegal because it exceeded the SENTAC sentencing guidelines or reflected judicial bias.
3. Whether the Superior Court was authorized to reimpose the remaining Level V portion of Boone's original sentence and suspend it upon completion of the Transitions Program.

## HOLDINGS

1. A motion to correct an illegal sentence under Rule 35(a) is narrow in scope and cannot be used to challenge the legality of a conviction or alleged errors occurring before the imposition of sentence, including attacks on the validity of a violation-of-probation adjudication.
2. A sentence is illegal for purposes of Rule 35(a) when it exceeds statutory limits, violates double jeopardy, is ambiguous or internally contradictory, omits a statutorily required term, is uncertain in substance, or is unauthorized by the judgment of conviction.
3. When sentencing a defendant for a violation of probation, the trial court may impose any period of incarceration up to and including the balance of the Level V time remaining on the original sentence.
4. A sentence exceeding the SENTAC sentencing guidelines, without more, does not establish judicial bias or render the sentence illegal because the guidelines are not binding.

## KEY QUOTATIONS

*“A motion for correction of sentence is very narrow in scope.” (at 2)*

*“It is not a means to challenge the legality of a conviction or to raise allegations of error occurring in the proceedings before the imposition of sentence.” (at 2)*

*“To the extent Boone’s sentence exceeded the SENTAC sentencing guidelines, that fact alone, without more, does not establish judicial bias because the guidelines are not binding.” (at 3)*

## FACTUAL BACKGROUND

Boone pleaded guilty to child-pornography offenses and received a total sentence of twenty-four years at Level V, suspended after three years for probation. After Boone violated probation, the Superior Court imposed twenty-one years at Level V, suspended upon successful completion of the Transitions Program and additional supervision. Boone argued that the violation-of-probation sentence was illegal because it exceeded the SENTAC guidelines, reflected a closed mind by the sentencing judge, and was based on allegedly improper evidence concerning uncharged conduct.

## PROCEDURAL HISTORY

Boone pleaded guilty in December 2013 to one count of dealing in child pornography and three counts of possessing child pornography and received an aggregate twenty-four-year sentence, suspended after three years of Level V incarceration for probation. After a 2017 violation of probation, the Superior Court imposed twenty-

one years at Level V, suspended upon successful completion of the Transitions Program and further supervision. Boone's subsequent motions for reduction of sentence and correction of sentence were denied, and he appealed the denial of the Rule 35(a) motion. The Delaware Supreme Court affirmed under the State's motion to affirm.

## DISPOSITION

affirmed

## CASES CITED

- Brittingham v. State, 705 A.2d 577, 578 (Del. 1998)
- United States v. Pavlico, 961 F.2d 440, 443 (4th Cir. 1992)
- United States v. Dougherty, 106 F.3d 1514, 1515 (10th Cir. 1997)
- Biddle v. State, 2017 WL 1376412 (Del. Apr. 12, 2017)

## OPINION

### PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE KEVIN H. BOONE, § § No. 332, 2018 Defendant Below- § Appellant, § § v. § Court Below—Superior Court § of the State of Delaware STATE OF DELAWARE, § § Cr. ID N1305018893 Plaintiff Below- § Appellee. § Submitted: August 16, 2018 Decided: October 9, 2018 Before STRINE, Chief Justice; VALIHURA and VAUGHN, Justices. ORDER Upon consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that: (1) The appellant, Kevin H. Boone, filed this appeal from the Superior Court's order dated May 30, 2018, denying Boone's motion for correction of an illegal sentence.

The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Boone's opening brief that the appeal is without merit. We agree and affirm. (2) Boone pled guilty in December 2013 to one count of dealing in child pornography and three counts of possessing child pornography.

The Superior Court sentenced Boone to a total period of twenty-four years at Level V incarceration, to be suspended after serving three years in prison for three years at decreasing levels of probation supervision. Boone did not appeal.

In December 2017, Boone was found in violation of his probation and sentenced to twenty-one years at Level V incarceration, to be suspended upon Boone's successful completion of the Transitions Program for two and a half years at decreasing levels of supervision. Boone did not appeal that judgment or sentence.

In February 2018, Boone filed a motion for reduction of sentence, which the Superior Court denied. Boone did not appeal. In May 2018, Boone filed a motion for correction sentence,

claiming that his VOP sentence was illegal.

The Superior Court denied his motion. This appeal followed. (3) Boone argues in his opening brief that his VOP sentence is illegal because it violated the SENTAC guidelines and the judge exhibited a closed mind. Boone also argues that his rights were violated at his VOP hearing because the State argued that Boone had engaged in conduct for which he was never charged.

(4) We find no merit to Boone's appeal. A motion for correction of sentence is very narrow in scope.<sup>1</sup> It is not a means to challenge the legality of a conviction or to raise allegations of error occurring in the proceedings <sup>1</sup> Brittingham v. State, 705 A.2d 577, 578 (Del. 1998). <sup>2</sup> before the imposition of sentence.<sup>2</sup> Thus, we reject Boone's attempt to attack the validity of his VOP adjudication by arguing that the State presented irrelevant and prejudicial evidence at his VOP hearing.

(5) Superior Court Criminal Rule 35(a) permits relief when "the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause."<sup>3</sup> A sentence also is illegal if 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 the substance of the sentence, or is a sentence which the judgment of conviction did not authorize."<sup>4</sup> (6) In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.<sup>5</sup> In this case, the Superior Court reimposed the Level V time remaining from Boone's original sentence, but ordered it to be suspended upon Boone's successful completion of the Transitions Program for decreasing levels of supervision.

Under the circumstances, the sentence was authorized by law, was neither <sup>2</sup> Id. <sup>3</sup> Id. (quoting United States v. Pavlico, 961 F.2d 440, 443 (4th Cir. 1992)). <sup>4</sup> Id. (quoting United States v. Dougherty, 106 F.3d 1514, 1515 (10th Cir. 1997)). <sup>5</sup> 11 Del. C. § 4334(c). <sup>3</sup> arbitrary nor excessive, and does not reflect any evidence of a closed mind by the sentencing judge.

To the extent Boone's sentence exceeded the SENTAC sentencing guidelines, that fact alone, without more, does not establish judicial bias because the guidelines are not binding.<sup>6</sup> Thus, we find no merit to Boone's appeal. NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Karen L. Valihura Justice <sup>6</sup> Biddle v. State, 2017 WL 1376412 (Del.

Apr. 12, 2017). <sup>4</sup>