

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)