

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMARR S. CANNON,	§
	§ No. 10, 2024
Defendant Below,	§
Appellant,	§ Court Below–Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 1706001541 (K)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: February 23, 2024

Decided: May 7, 2024

Before **SEITZ**, Chief Justice; **VALIHURA** and **GRIFFITHS**, Justices.

**ORDER**

After consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the Superior Court record, it appears to the Court that:

(1) The appellant, Jamarr Cannon, appeals the Superior Court’s denial of his motion for sentence modification. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Cannon’s opening brief that his appeal is without merit. We agree and affirm.

(2) Following a bench trial in January 2018, a Superior Court judge found Cannon guilty of drug dealing (cocaine), aggravated possession (cocaine), resisting arrest, possession of drug paraphernalia, and failure to have proof of insurance in his possession. Based on Cannon’s prior convictions for possession with intent to

deliver, trafficking cocaine, and possession of ammunition by a person prohibited, the State moved to have Cannon declared a habitual offender under 11 *Del. C.* § 4214(d). On April 11, 2018, the Superior Court granted the State’s motion and sentenced Cannon as follows: for aggravated possession, to 25 years of incarceration, suspended after 15 years for one year of supervision at Level IV;<sup>1</sup> and for resisting arrest, as a habitual offender under Section 4214(d), to 25 years of incarceration, suspended after 4 years followed by 1 year of Level III probation.<sup>2</sup> Cannon appealed.

(3) While his appeal was pending in this Court, Cannon filed a timely pro se motion for sentence modification under Superior Court Criminal Rule 35(b) in July 2018 (the “2018 Motion”). In support of his motion, Cannon claimed that he: (i) was receiving inadequate health care at the prison, (ii) was interested in participating in vocational training at the prison, and (iii) wished to reunite with his children and return to work. The Superior Court deferred the 2018 Motion pending the outcome of his direct appeal. On December 12, 2018, we affirmed Cannon’s convictions.<sup>3</sup> The Superior Court did not revisit the 2018 Motion.

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<sup>1</sup> Cannon’s convictions for aggravated possession and drug dealing merged for sentencing purposes.

<sup>2</sup> The Superior Court imposed fines for possession of paraphernalia and failure to have proof of insurance in his possession.

<sup>3</sup> *Cannon v. State*, 2018 WL 6575432 (Del. Dec. 12, 2018).

(4) In August 2020, Cannon filed a motion for correction of illegal sentence under Rule 35(a), arguing that he had been improperly sentenced under Section 4214(d) because he did not have two prior Title 11 violent felony convictions.<sup>4</sup> The Superior Court denied the motion, and Cannon appealed. On appeal, the State conceded error, and this Court remanded with directions for the Superior Court to resentence Cannon for resisting arrest under the appropriate subsection of Section 4214.<sup>5</sup> Cannon then moved to modify his sentence for aggravated possession under Rule 35(d), which permits the Superior Court to modify any sentence entered in the same sentencing order when it corrects or modifies another sentence in the order.

(5) On May 6, 2021, the parties convened for Cannon's resentencing and consideration of his Rule 35(d) motion. After hearing from the parties, the Superior Court denied Cannon's Rule 35(d) motion and resentedenced Cannon as follows: for aggravated possession, to 25 years of incarceration, suspended after 15 years for one year of supervision at Level IV; and for resisting arrest, as a habitual offender under Section 4214(b), to 25 years of incarceration, suspended after 4 years followed by 1 year of Level III probation.<sup>6</sup> We affirmed Cannon's resentencing on appeal.<sup>7</sup>

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<sup>4</sup> At the time Cannon committed the conduct that led to his criminal charges, Section 4214(d) provided that the Superior Court must sentence a defendant who had been twice convicted of a Title 11 violent felony and was thereafter convicted of third or subsequent Title 11 violent felony to a minimum sentence of the statutory maximum statutory penalty for that felony.

<sup>5</sup> *Cannon v. State*, 2021 WL 855878 (Del. Mar. 5, 2021).

<sup>6</sup> The Superior Court waived as uncollectible the fines it had previously imposed for Cannon's remaining convictions.

<sup>7</sup> *Cannon v. State*, 2022 WL 664826 (Del. Mar. 2, 2022).

(6) In June 2022, Cannon filed a pro se motion for postconviction relief together with a motion for appointment of counsel. In August 2022, Cannon filed a pro se motion for correction of illegal sentence under Rule 35(a), arguing that the Double Jeopardy Clause prohibited his resentencing. The Superior Court denied the Rule 35(a) motion, noting that this Court had rejected a similar argument when it affirmed Cannon’s resentencing. By way of separate order, the Superior Court also granted Cannon’s motion for appointment of counsel in connection with his pending pro se motion for postconviction relief.

(7) In June 2023, Cannon attempted to file an amendment to his 2018 Motion, upon which the Superior Court never ruled. Because Cannon was represented by counsel in connection with his motion for postconviction relief, however, the court did not docket the amendment and forwarded it to postconviction counsel. Thereafter, Cannon filed a “Notice of Motion Rule 47,” noting that postconviction counsel did not represent Cannon in connection with the 2018 Motion and asking the court to accept his amendment thereto. By way of this amendment, Cannon sought to add a claim to the 2018 Motion—specifically, that his sentence had been imposed in an illegal manner because the Superior Court relied on improper aggravating factors to enhance his sentence. Addressing the motions in the order in which they were received, the Superior Court first denied the 2018 Motion, finding Cannon’s sentence to be appropriate for the reasons stated at

sentencing, The Superior Court then dismissed Cannon’s motion to amend the 2018 Motion as moot. This appeal followed.

(7) “The merit of a [motion for] sentence modification under Rule 35(b) is directed to the sound discretion of the Superior Court.”<sup>8</sup> We also review the Superior Court’s denial of a Rule 35(a) motion for abuse of discretion.<sup>9</sup> To the extent the claim involves a question of law, however, we review it *de novo*.<sup>10</sup>

(8) On appeal, Cannon argues that the Superior Court erred when it held that his motion to amend his timely filed motion for sentence modification was moot and that his sentence was imposed in an illegal manner. Although we express no opinion on whether Cannon’s motion to amend was moot, we affirm the Superior Court’s judgment on the independent and alternative ground that Cannon’s sentence was not imposed in an illegal manner.<sup>11</sup>

(9) At Cannon’s 2018 sentencing and in its 2018 sentencing order, the Superior Court cited five aggravating factors: Cannon’s status as a habitual offender, his repetitive criminal conduct, the fact that he was on probation when was arrested, and his lack of remorse.<sup>12</sup> Cannon argues that these aggravators were improperly

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<sup>8</sup> *Rondon v. State*, 2008 WL 187964, at \*1 (Del. Jan. 15, 2008).

<sup>9</sup> *Fountain v. State*, 2014 WL 4102069, at \*1 (Del. Aug. 19, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> See *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (recognizing that this Court may affirm a trial court’s judgment on the basis of a different rationale than that relied upon by the trial court).

<sup>12</sup> These same aggravating factors are cited in the 2021 resentencing order.

considered because they were not alleged in the grand jury's indictment as required by 11 *Del. C.* § 4751A(3). But Cannon confuses aggravating factors as they relate to the charging of a defendant with a drug offense under the Uniform Controlled Substances Act with aggravating factors as they relate to the Superior Court's upward deviation from the sentencing guidelines set forth by the Sentencing Accountability Commission ("SENTAC") when sentencing a defendant. Under the legislation that created SENTAC, SENTAC was expressly directed to define under what conditions of aggravation or mitigation a sentencing judge may impose a sentence outside of the sentencing guidelines.<sup>13</sup> It did so, and the aggravating factors that the Superior Court cited here are among those so defined. Simply put, the Superior Court's enhancement of Cannon's sentence did not run afoul of Section 4751A.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Chief Justice

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<sup>13</sup> See *Siple v. State*, 701 A.2d 79, 82 (Del. 1997).