

This summary of Delaware appellate case law addresses four topics: availability of and standards for appellate review, standards and allowable ground for departure, constitutional requirements for proof of facts permitting upward departure under *Blakely v. Washington*, and constitutional requirements for proof of facts that increase the minimum sentence under *Alleyne v. United States*.

## 1. Availability of and General Standards for Appellate Review.

Delaware does not allow appellate review of a sentence merely because it diverges from the guidelines.<sup>1</sup> The enabling legislation for the Sentencing Accountability Commission provided that the commission should recommend a procedure for appellate review of sentences that are imposed outside of the guidelines, but no such recommendation was ever made.<sup>2</sup> In the absence of a specific grant of jurisdiction for appellate review, the Delaware Supreme Court recognized when it implemented the guidelines that the guidelines are voluntary and nonbinding and as such, no party has the right to appeal a sentence that does not conform to the guidelines.<sup>3</sup>

Appellate review of criminal sentences is thus generally limited to determining whether the sentence is within the statutory limits set by the legislature.<sup>4</sup> However, the Supreme Court required that reasons be given for deviations from the guidelines because the Court *does* have jurisdiction to “review criminal sentences on the basis of alleged: unconstitutionality; factual predicates which are either false, impermissible, or lack minimum indicia of reliability; judicial vindictiveness, bias, or sentencing with a ‘closed mind;’ and any other illegality.”<sup>5</sup>

## 2. Standards and Allowable Grounds for Departure.

A judge may depart from the SENTAC guidelines to any extent, and a departure is not a basis for relief on appeal.<sup>6</sup> The sentencing judge is required to state on the record reasons for departure from the SENTAC guidelines, but failure of the court to state reasons for the departure is not reversible error.<sup>7</sup>

## 3. Constitutional Requirements For Proof of Facts Permitting Upward Departure (*Blakely v. Washington* issues).

Since Delaware’s guidelines are purely advisory and not legally binding, courts have repeatedly held that they are not impacted by *Blakely*. “The trial court ... is authorized to exceed the SENTAC guidelines without making any factual findings beyond those reflected in the jury’s verdict.”<sup>8</sup>

<sup>1</sup> *Teti v. State*, 905 A.2d 747 (Del. 2006) (unpublished table decision) (upholding sentence of Superior Court of 20 years imprisonment when the sentencing guidelines recommended a sentence of two to five years of incarceration); *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

<sup>2</sup> Del. Code Ann. tit. 11, § 6581(g) (2019); *Siple*, 701 A.2d at 82.

<sup>3</sup> Del. Sup. Ct., Christie, C.J., Admin. Dir. No. 76, ¶ 3 (Sept. 15, 1987).

<sup>4</sup> See *Gaines v. State*, 571 A.2d 765, 766 (Del. 1990) (citing *Ward v. State*, 567 A.2d 1296 (Del. 1989)).

<sup>5</sup> *Siple*, 701 A.2d at 83.

<sup>6</sup> See, e.g., *Brown v. State*, 913 A.2d 569 (Del. 2006) (unpublished table decision) (explaining that an upward sentence from the guidelines does not make a sentence illegal and does not provide a basis for relief from a sentence).

<sup>7</sup> See, e.g., *Via v. State*, 782 A.2d 267 (Del. 2001) (unpublished table decision); *State v. Connor*, 2005 WL 147931 at \*6 (Del. Super. Ct. Jan. 19, 2005) (“The SENTAC guidelines can be ignored entirely if the sentencing judge is convinced that the facts of a particular case justify a departure as long as the sentence is within the statutory maximum.”). *But see Martini v. State*, 941 A.2d 1019 (Del. 2007) (unpublished table decision) (considering a judge’s failure to state reason for departure among reasons for reversing a sentence); *Siple*, 701 A.2d at 83 (explaining that a judge is required to give reasons for deviation from SENTAC guidelines because a court *does* have appellate jurisdiction to consider alleged illegality such as, “unconstitutionality; factual predicates which are either false, impermissible, or lack minimum indicia of reliability; judicial vindictiveness, bias, or sentencing with a ‘closed mind;’ and any other illegality.”).

<sup>8</sup> See *Riego v. State*, 884 A.2d 512 (Del. 2005) (unpublished table decision) (“As this Court has recognized, however, *Blakely* simply does not apply to Delaware’s “voluntary and non-binding” sentencing guidelines.); *Benge v. State*, 862 A.2d 385 (Del. 2004) (unpublished table decision); *State v. Wilson*, 2005 WL 3006781 at \*3 (Del. Super. Ct. Nov. 8, 2005); *State v. Krafchick*, 2005 WL 697940 at \*4 (Del. Super. Ct. Mar. 8, 2005) (discussing the impact of *Blakely* on the voluntary guidelines, “Consequently, the decision in *Blakely* has no effect on the present case.”), *aff’d*, 892 A.2d 1084 (Del. 2006) (unpublished table decision).

#### 4. **Constitutional Requirements For Proof of Facts That Increase the Minimum Sentence Under *Alleyne v. United States*.**

Since Delaware's guidelines are purely advisory and not legally binding they are not impacted by *Alleyne*. Appeal upon basis of departure from guidelines is impermissible and has been repeatedly dismissed as lacking merit. "The trial court ... is authorized to exceed the SENTAC guidelines without making any factual findings beyond those reflected in the jury's verdict."<sup>9</sup>

#### 5. **Other Important Sentencing Decisions.**

A judge is required to state on the record reasons for departing from the SENTAC guidelines, but this requirement is satisfied by listing the aggravating or mitigating factors on the sentencing form and the judge has no obligation to orally relay these factors at sentencing.<sup>10</sup>

*Williams v. State* clarifies that the Delaware code and sentencing guidelines enumerate "violent crimes" rather than merely describe what constitutes a crime of violence as in other jurisdictions, including the federal sentencing guidelines. Therefore whether a crime is considered "violent" or not is not appealable.<sup>11</sup>

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<sup>9</sup> *Benge v. State*, 862 A.2d 385 (Del. 2004) (unpublished table decision).

<sup>10</sup> *Moncavage v. State*, 7 A.3d 485 (Del. 2010) (unpublished table decision).

<sup>11</sup> *Williams v. State*, 85 A.3d 89 (Del. 2014) (unpublished table decision).