

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN DELANCY,	§
	§ No. 479, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID 1003006850
Plaintiff Below-	§
Appellee.	§

Submitted: November 14, 2011

Decided: December 28, 2011

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 28<sup>th</sup> day of December 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Kevin Delancy, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Delancy's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Delancy was indicted on seventeen counts of dealing in child pornography in violation of 11 Del. C. § 1109(4).<sup>1</sup> In October 2010, he pled guilty to one of the counts, and the State dismissed the remaining charges. The Superior Court immediately sentenced Delancy in accordance with his plea agreement to fifteen years at Level V incarceration, to be suspended after serving two years for decreasing levels of supervision. Delancy did not appeal his sentence. Instead, he filed a motion for modification of sentence, which the Superior Court denied in January 2011. Delancy did not appeal that ruling. In August 2011, he filed a motion for correction of illegal sentence, which the Superior Court denied. This appeal followed.

(3) Delancy contends that his sentence is illegal because there is an ambiguity in the sentencing guidelines regarding whether the crime for which he was convicted is a class B or class D felony and that he unlawfully was sentenced for the harsher punishment associated with a class B offense.

(4) Delancy is incorrect. In 2008, the General Assembly amended 11 Del. C. § 1109 to provide that unlawfully dealing in child pornography is

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<sup>1</sup> See DEL. CODE ANN. tit. 11, § 1109(4) (Supp. 2010). Effective July 16, 2008, a charge of dealing in child pornography under § 1109(4) was increased from a class D felony to a class B felony, which has an authorized sentencing range of two to twenty-five years imprisonment. See DEL. CODE ANN. tit. 11, 4205(b)(2) (2007).

a class B felony.<sup>2</sup> A class B felony carries a minimum sentence of two years and a maximum sentence of twenty-five years.<sup>3</sup> There is no ambiguity in the statute. The Superior Court sentenced Delancy in accordance with his plea agreement and within the statutorily-authorized sentencing range. Thus, his sentence is not illegal.<sup>4</sup> Accordingly, the judgment below may be affirmed on the ground stated by the Superior Court that Delancy's sentence is within the statutory range and therefore is lawful.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>2</sup> See 76 Del. Laws. ch. 364 (effective July 16, 2008).

<sup>3</sup> DEL. CODE ANN. tit 11, § 4205(b)(2) (2007).

<sup>4</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).