

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH SMITH,	§
	§ No. 252, 2008
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9712014022
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 17, 2008
Decided: September 10, 2008

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

ORDER

This 10th day of September 2008, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Kenneth Smith, filed an appeal from the Superior Court’s May 6, 2008 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) In June 1998, Smith was found guilty by a Superior Court jury of Robbery in the First Degree. The State's petition for habitual offender status was granted by the Superior Court on August 7, 1998. The Superior Court sentenced Smith as a habitual offender to life in prison without the possibility of parole.² Smith's conviction and sentence were affirmed by this Court on direct appeal.³ Thereafter, Smith filed a series of postconviction motions, all of which were unsuccessful.

(3) In this appeal, Smith claims that his sentence as a habitual offender is illegal as "disproportionate" under the Eighth Amendment of the United States Constitution on the grounds that a) the charge against him should not have been upgraded from Shoplifting to Robbery; b) he has a chemical dependency that has never been treated; and c) his criminal history indicates that he is not incorrigible. Moreover, Smith claims, the Superior Court abused its discretion when it denied his motion for correction of sentence without a written decision or an evidentiary hearing.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.⁴ A sentence also is illegal when it is ambiguous with respect to the time and

² Del. Code Ann. tit. 11, § 4214(b).

³ *Smith v. State*, Del. Supr., No. 392, 1998, Berger, J. (Sept. 7, 1999).

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

manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁵ The narrow function of a Rule 35(a) proceeding is to correct an illegal sentence, not to re-examine alleged errors occurring prior to the imposition of sentence.⁶

(5) Smith does not dispute that he had the requisite number of qualifying convictions to support the State's petition for habitual offender status under § 4214(b). Once the requisite number of qualifying convictions is established, the statute requires the Superior Court to impose a life sentence without the possibility of parole.⁷ Moreover, this Court has upheld the constitutionality of § 4214(b).⁸ Therefore, Smith's claim that his sentence is unconstitutional and, therefore, illegal under Rule 35(a) is without merit.

(6) Smith also claims that the Superior Court should not have denied his postconviction motion without holding an evidentiary hearing. However, it is within the discretion of the Superior Court to determine whether such a hearing is necessary.⁹ In the absence of an abuse of discretion on the part of the Superior Court, we conclude that this claim is without merit. Smith also claims that the Superior Court should have issued a written decision on his

⁵ Id.

⁶ Id.

⁷ Del. Code Ann. tit. 11, § 4214(b).

⁸ *Williams v. State*, 539 A.2d 164, 179-80 (Del. 1988).

⁹ Super. Ct. Crim. R. 61(h) (1) and (3).

postconviction motion. The record reflects that, while the Superior Court used a form order to decide Smith's motion, it did provide the rationale for its decision on the blank line on the form, as it was required to do.¹⁰ We, thus, conclude that this claim, too, is without merit.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁰ *Ball v. Division of Child Support Enforcement*, 780 A.2d 1101, 1104 (Del. 2001).