

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERALD E. WALTERS,	§
	§
Defendant Below,	§ No. 299, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0905019931
Plaintiff Below,	§
Appellee.	§

Submitted: July 26, 2013
Decided: August 23, 2013

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

ORDER

This 23rd day of August 2013, upon consideration of the appellant’s opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The appellant, Gerald E. Walters, appeals from the Superior Court’s denial of his motion for correction of sentence. The State moves to affirm the judgment below on the ground that it is manifest on the face of Walters’ opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Walters pled guilty in November 2009 to Assault in the First Degree and Possession of a Firearm During the Commission of a Felony. Following a presentence investigation, the Superior Court sentenced Walters to a total period of thirty years at Level V incarceration to be suspended

after serving twenty years and upon the successful completion of the Key Program for decreasing levels of supervision. Walters did not appeal. He filed two unsuccessful motions for modification of sentence in February 2010 and October 2012. In April 2013, Walters filed two related motions seeking correction of an illegal sentence, arguing that his sentence for assault was illegal because the Superior Court exceeded the SENTAC guidelines and failed to set forth its reasons for doing so on the record. Walters also argued that his sentence was ambiguous. The Superior Court treated Walters' motions as a single motion and denied relief. Walters appeals that ruling.

(3) A motion for correction of an illegal sentence under Rule 35(a) is very narrow in scope.¹ Rule 35(a) permits relief when “the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause.”² A sentence also is illegal if it “is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.”³

(4) In this case, Walters contends in part that his sentence is illegal because it exceeded the SENTAC guidelines. The SENTAC guidelines, however,

¹ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

² *Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4th Cir. 1992)).

³ *Id.* (quoting *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir. 1997)).

are only presumptive. There is no basis to challenge the legality of a sentence solely on the grounds that a sentence exceeds the SENTAC guidelines.⁴ Furthermore, Walters' suggestion that his sentence is ambiguous is unsupported by the facts. Accordingly, we find no error in the Superior Court's denial of Walters' motion for correction of an illegal sentence under Rule 35(a).

(5) To the extent Walters' motion could be construed as a claim under Rule 35(a) that his sentence was imposed in an illegal manner because the Superior Court did not state its reasons for departing from the sentencing guidelines on the record,⁵ such an argument was untimely because it was not raised within 90 days of sentencing.⁶

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

⁵ Walters does not dispute that the sentencing order itself identifies two aggravating factors justifying departure from the guidelines. His complaint is simply that the Superior Court failed to verbalize these factors on the record at the sentencing hearing.

⁶ *See* DEL. SUPER. CT. CRIM. R. 35(a) (providing that a motion to correct a sentence imposed in an illegal manner must be filed within the time limit set forth in Rule 35(b), *i.e.*, within 90 days of sentencing).