

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN F. WHITEMAN,	§
	§ No. 346, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 30604628DI
	§ 30901716DI
Plaintiff Below-	§
Appellee.	§

Submitted: August 22, 2013
Decided: September 20, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 20th day of September 2013, 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, Benjamin F. Whiteman, filed an appeal from the Superior Court's June 24, 2013 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 this appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in April 1987, Whiteman pleaded guilty to Burglary in the Second Degree. Although Whiteman was declared a habitual offender,² he was not sentenced as such. Rather, he was sentenced to only 10 years of Level V incarceration, to be suspended after 3 years for Level III probation. In August 1989, a Superior Court jury found Whiteman guilty of Unlawful Sexual Penetration in the Third Degree. Based upon the Superior Court's earlier finding of habitual offender status, Whiteman was sentenced to life in prison. Whiteman's conviction was affirmed by this Court on direct appeal.³

(3) Whiteman has filed numerous motions attacking his conviction, his guilty plea, his habitual offender designation and the legality of his 1989 sentence, all of which have been unsuccessful. The record before us reflects that, on at least twelve separate occasions between 2001 and 2013, this Court has affirmed the Superior Court's denial of a challenge by Whiteman to his sentence, most recently in February of this year.⁴

(4) In his latest appeal, Whiteman asserts a number of arguments that may fairly be summarized as follows: the Superior Court erred and/or abused its

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, §4214(a).

³ *Whiteman v. State*, 1991 WL 12112 (Del. Jan. 11, 1991).

⁴ *Whiteman v. State*, 2013 WL 434143 (Del. Feb. 4, 2013).

discretion when it denied his motion for correction of an illegal sentence. In particular, he takes issue with the Superior Court's application of Rule 35(b)'s 90-day time bar to his claim.

(5) Because this Court's prior decisions regarding Whiteman's 1989 sentencing constitute the "law of the case," he is foreclosed from asserting a claim based upon that issue in this proceeding.⁵ Even if Whiteman's claim were not barred under the "law of the case" doctrine, it is substantively without merit. Rule 35(a) permits relief only where the sentence a) exceeds the statutorily-authorized limits; b) violates double jeopardy; c) is ambiguous with respect to the time and manner in which it is to be served; d) is internally contradictory; e) omits a term required to be imposed by statute; f) is uncertain as to its substance; or g) is a sentence that the judgment of conviction did not authorize.⁶ Whiteman has failed to demonstrate any illegality in his sentence under Rule 35(a). For all of the above reasons, we conclude that Whiteman's claims are unavailing.

(6) 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.

⁵ *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

⁶ *Id.* at 578.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁷

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁷ This Court may affirm on the basis of a different rationale from that articulated by the Superior Court. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).