

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY B. LASKOWSKI,	§
	§ No. 353, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 1209021617
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 19, 2013  
Decided: September 16, 2013

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

**ORDER**

This 16<sup>th</sup> 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, Gary B. Laskowski, filed an appeal from the Superior Court’s June 4, 2013 order denying his motion for correction of 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.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, in November 2012, Laskowski pleaded guilty to Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm By a Person Prohibited and Carrying a Concealed Deadly Weapon. On the conviction of carrying a concealed deadly weapon, he was sentenced as a habitual offender to 6 months at Level V. On each of his two firearm convictions, he was sentenced to 3 years at Level V, with no probation to follow. Finally, on the robbery conviction, Laskowski was sentenced to 25 years at Level V, to be suspended after 3 years and successful completion of either the Key Program or the Greentree Program for 1 year at Level IV and, upon successful completion of Level IV, the balance of the sentence to be suspended for 5 years at Level III Aftercare.<sup>2</sup> Laskowski's subsequent motions for sentence modification were denied by the Superior Court.

(3) In Laskowski's instant appeal from the Superior Court's denial of his motion for correction of illegal sentence, he claims that the Superior Court's

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> On January 24, 2013, the Superior Court modified Laskowski's sentencing order solely with respect to the amount of restitution owed.

sentencing order does not conform to the requirements of Del. Code Ann. tit. 11, §1447A (e)<sup>3</sup> and, therefore, is illegal.

(4) Under Rule 35(a), a sentence is illegal only if it 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 does not authorize.<sup>4</sup>

(5) The record before us reflects that the sentencing judge intentionally crafted Laskowski's sentencing order as he did. The judge's purpose was to allow Laskowski to seamlessly complete his Level V sentences, then his post-Level V sentence program and, finally, his post-program aftercare. This was a rational approach that actually will benefit Laskowski. In the absence of any showing of an abuse of discretion on the part of the Superior Court in structuring Laskowski's sentencing order as he did or that the sentencing order is illegal pursuant to Rule 35(a), we conclude that Laskowski's claim is without merit.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented are controlled by settled Delaware law

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<sup>3</sup> The statute states that a sentence for an underlying felony should be served prior to a sentence for a weapon offense.

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

and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice