

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRYL ONEY,	§
	§
Defendant Below-	§ No. 172, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S86-07-0138
Plaintiff Below-	§ S91-01-0617
Appellee.	§

Submitted: August 2, 2000

Decided: September 20, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 20th day of September 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Darryl Oney, filed this appeal from a March 27, 2000 order of the Superior Court denying his motion to correct his sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Oney claims that the Superior Court exceeded its authority in reimposing the entire sentence remaining on his rape conviction—10 years incarceration at Level V—for a violation of probation (VOP). Oney

contends that, under a “strict interpretation” of the Delaware criminal code,¹ a sentencing judge may revoke probation and reimpose a sentence in its entirety only if the sentence was previously suspended. He contends that, because his sentence was not previously suspended in March 1991 when he was found guilty of a VOP, the sentencing judge was not authorized to impose all the prison time remaining on his original sentence in April 1994, when the Superior Court found him guilty of another VOP.

(3) In August 1986, Oney pleaded guilty to rape in the second degree. In June 1987, the Superior Court sentenced Oney to 15 years incarceration at Level V, to be suspended after serving 5 years for 10 years probation. In March 1991, Oney pleaded guilty to robbery in the first degree and was sentenced to 3 years incarceration at Level V, to be suspended after 2 years for 1 year at Level II probation. While Oney contends that the Superior Court also found that his robbery conviction constituted a violation of his probation on the rape charge, neither the sentencing order nor anything else in the record before us supports that contention. Oney did not file a direct appeal from either of his convictions or sentences.

¹11 Del. C. § 4334(c).

(4) In April 1994, the Superior Court found Oney to be in violation of his probation on the rape conviction. It revoked Oney's probation and sentenced him to a total of 10 years incarceration at Level V.² Oney did not file a direct appeal, but filed a motion to correct his sentence, which was denied by the Superior Court. In April 1999, Oney filed a motion to vacate his sentence. The Superior Court denied the motion and this Court affirmed the Superior Court on appeal.³

(5) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." "The 'narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.'"⁴ "Relief under Rule 35(a) is available 'when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy Clause'"⁵ "A sentence is also 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

²Oney was also found guilty of violating his probation on the robbery conviction and was sentenced to 1 year incarceration at Level V.

³*Oney v. State*, Del. Supr., No. 208, 1999, Berger, J., 1999 WL 652060 (Aug. 12, 1999) (ORDER).

⁴*Brittingham v. State*, Del. Supr., 705 A.2d 577, 578 (1998) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).

⁵*Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4th Cir., 1992)).

uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.’”⁶

(6) Oney does not contend that his sentence exceeded the statutory authorization, constituted double jeopardy or was ambiguous or contradictory. As such, no relief is available to him pursuant to Rule 35(a). Moreover, Oney bases his claim on a faulty premise. There is nothing in the record before this Court indicating that the Superior Court found him guilty of a probation violation in March 1991 when it convicted and sentenced him on the robbery charge.⁷ There is, thus, no factual support for Oney’s claim that the Superior Court had no authority to reimpose his original sentence in its entirety in April 1994 because it had not suspended his sentence upon finding him guilty of a VOP in March 1991. The Superior Court did not enlarge Oney’s period of probation, nor did it impose a sentence greater than that originally imposed. As

⁶*Id.* (quoting *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir., 1997)).

⁷Oney states in his Reply Brief that the sentencing judge ruled in open court that his robbery conviction constituted a violation of his probation. Oney further states that only a review of the transcript of the hearing will reveal what the judge actually said. However, he did not provide this Court with the transcript. As the appellant, Oney had the burden of providing this Court with the hearing transcript if he believed it would provide support for his claim. *Slater v. State*, Del. Supr., 606 A.2d 1334, 1336-37 (1992).

such, the Superior Court acted within its statutory authority in reimposing Oney's original sentence.⁸

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

BY THE COURT:

s/Joseph T. Walsh
Justice

⁸*Ingram v. State*, Del. Supr., 567 A.2d 868-69 (1989); *Tiller v. State*, Del. Supr., 257 A.2d 385, 387 (1969).