

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRY K. WHITFIELD,	§	
	§	
Defendant Below-	§	No. 29, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0202006501
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: March 17, 2004
Decided: May 12, 2004

Before **HOLLAND**, **STEELE** and **JACOBS**, Justices.

ORDER

This 12th day of May 2004, upon consideration of the appellant's opening brief, the appellee's motion to affirm pursuant to Supreme Court Rule 25(a) and the appellant's response thereto,¹ it appears to the Court that:

(1) The defendant-appellant, Terry K. Whitfield, filed an appeal from the Superior Court's January 9, 2004 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on

¹ We permitted the appellant to file a response to the motion to affirm, dated March 17, 2004, and have considered that response in this appeal.

the ground that it is manifest on the face of Whitfield's opening brief that the appeal is without merit.² We agree and affirm.

(2) In July 2003, Whitfield pleaded guilty to Delivery of Cocaine, Possession of Cocaine Within 300 Feet of a Park, and two counts of Possession of Cocaine Within 1000 Feet of a School. He was sentenced to a total of 25 years incarceration at Level V, to be suspended after 8 years for decreasing levels of probation.

(3) In this appeal, Whitfield claims that his sentences are illegal because: a) the drug charges against him were retaliatory and fraudulent; b) the drug charges against him were duplicative and in violation of double jeopardy; c) his counsel and counsel for the State conspired to deprive him of a speedy trial; d) the sentencing judge improperly failed to recuse himself; e) he pleaded guilty to crimes for which he was never indicted; and f) the Superior Court abused its discretion by not granting his motion for correction of sentence.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." The purpose of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior

² Supr. Ct. R. 25(a).

to the imposition of sentence.³ A sentence is illegal when it exceeds the statutorily-authorized limits or violates double jeopardy.⁴ 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 its substance, or is not authorized by the judgment of conviction.⁵

(5) All of Whitfield's claims, including his claim of a double jeopardy violation, are fundamentally directed to the validity of his convictions rather than to the legality of his sentences. A proceeding under Rule 35(a) presupposes a valid conviction.⁶ Whitfield's claims also would require a re-examination of the alleged errors occurring at the proceedings prior to the imposition of sentence, which is not permitted under the Rule. As such, Whitfield's claims are not properly raised in a motion to correct sentence pursuant to Rule 35(a) and the Superior Court properly so determined.⁷

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

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ His claims would properly be raised in a motion for postconviction relief pursuant to Superior Court Criminal Rule 61.

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

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice