

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARYL BRAXTON,	§	
	§	
Defendant Below-	§	No. 342, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 01040155591
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: February 28, 2005  
Decided: April 13, 2005

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

**ORDER**

This 13<sup>th</sup> day of April 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Daryl Braxton, filed an appeal from the Superior Court's June 30, 2004 order denying his motion to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) On May 16, 2001, Braxton pleaded guilty to Possession with Intent to Deliver Cocaine. On the same date, the Superior Court sentenced him to 5 years incarceration at Level V, to be suspended immediately for the boot camp diversion program, followed by 2½ years of Level IV and Level III probation. Braxton was

to be held at Level III probation pending space availability in the boot camp diversion program.

(3) In September 2001, while waiting at Level III for space in the boot camp diversion program, Braxton was arrested on charges of disorderly conduct and loitering. In October 2001, he was arrested a second time on a charge of criminal impersonation and was found guilty of that charge. Braxton was later charged with additional criminal offenses, all of which were dismissed. For reasons that are not entirely clear, Braxton never was placed in the boot camp diversion program. In May 2003, the Superior Court ordered Braxton incarcerated for 5 years at Level V, pursuant to its May 16, 2001 sentencing order, based upon his conviction of criminal impersonation.

(4) 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.<sup>1</sup> A proceeding under Rule 35 presupposes a valid conviction.<sup>2</sup> Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates the Double Jeopardy clause.<sup>3</sup> A sentence also is illegal if it is ambiguous with respect to the time and manner in

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

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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 that the judgment of conviction did not authorize.<sup>4</sup>

(5) Braxton is not entitled to relief pursuant to Rule 35(a). The Superior Court was required to impose a 5-year sentence for Braxton's conviction of Possession with Intent to Deliver Cocaine, since Braxton had a previous drug conviction.<sup>5</sup> Moreover, the Superior Court was required to impose the full mandatory sentence for the underlying conviction upon a finding of a probation violation.<sup>6</sup> As such, Braxton's sentence falls within the statutorily-authorized limits. To the extent Braxton argues that the sentence is ambiguous or internally contradictory, that argument fails as well, since the terms of the sentencing order are clear on their face.

(6) It appears that, while Braxton seeks relief pursuant to Rule 35(a), in fact, his complaint is that he was never moved to boot camp when space became available. His argument appears to be that, if he had been moved to boot camp, he would not have violated his probation and would not have had to serve his 5-year Level V sentence. We find this argument unpersuasive. Even assuming that Braxton never was placed in the boot camp diversion program due to an error by

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<sup>4</sup> Id.

<sup>5</sup> Del. Code Ann. tit. 16, § 4763(a) (1) (c) (2003).

<sup>6</sup> *Whitner v. State*, 762 A.2d 18, 19 (Del. 2000); Del. Code Ann. tit. 11, § 6712(h) (2001).

the State, it is Braxton, and not the State, who must bear responsibility for his violation of probation. Under these circumstances, we find no error or abuse of discretion on the part of the Superior Court in denying Braxton's motion for correction of sentence.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice