

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH DEPUTY,	§
	§ No. 377, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 9612008864
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 3, 2005

Decided: December 8, 2005

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

ORDER

This 8th day of December 2005, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

(1) The defendant-appellant, Kenneth Deputy, filed an appeal from the Superior Court's August 10, 2005 order denying his second 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

¹ On September 27, 2005, this Court granted Deputy's request to file a reply to the motion to affirm.

Deputy's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In September 1997, Deputy was found guilty by a Superior Court jury of Attempted Robbery in the First Degree, Assault in the First Degree, and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 27 years incarceration at Level V, to be suspended after 22 years for decreasing levels of probation. This Court affirmed Deputy's convictions and sentences on direct appeal.² Deputy subsequently filed two motions for postconviction relief pursuant to Superior Court Criminal Rule 61. This Court affirmed the Superior Court's denials of both motions.³ Deputy then filed his first motion for correction of an illegal sentence pursuant to Rule 35(a). This Court affirmed the Superior Court's denial of that motion as well.⁴

(3) In this appeal, Deputy asserts six claims of error that may fairly be summarized as follows: a) the robbery count of the indictment was defective because it omitted the term "intentionally"; b) the jury instruction on the robbery charge was misleading because it did contain the term "intentionally"; c) the Superior Court lacked jurisdiction over his case as a

² *Deputy v. State*, Del. Supr., No. 541, 1997, Holland, J. (Aug. 10, 1998).

³ *Deputy v. State*, Del. Supr., No. 437, 1999, Berger, J. (Mar. 9, 2000); *Deputy v. State*, Del. Supr., No. 699, 2002, Berger, J. (Apr. 17, 2003).

⁴ *Deputy v. State*, Del. Supr., No. 21, 2005, Jacobs, J. (May 6, 2005).

result of the defective indictment; and d) his robbery sentence is illegal because the Superior Court omitted the term “intentionally” when imposing sentence.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” The purpose of Rule 35(a) is to permit correction of an illegal sentence, not to re-examine alleged errors occurring at the trial or during other proceedings prior to the imposition of sentence.⁵ A sentence is illegal when it exceeds the statutorily-authorized limits, violates double jeopardy, 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.⁶

(5) Because Deputy’s first three claims concern alleged errors that occurred during proceedings prior to the imposition of sentence, he is not entitled to relief under Rule 35(a) with respect to those claims. Because there is no requirement that the Superior Court use the term “intentionally” when imposing a robbery sentence, Deputy also is not entitled to relief under Rule 35(a) with respect to his last claim.

⁵ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁶ *Id.*

(6) It is manifest on the face of Deputy's 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.

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/ Myron T. Steele
Chief Justice