

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE J. CARR,	§
	§ No. 160, 2006
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 82002234DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 10, 2006

Decided: July 10, 2006

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

ORDER

This 10th day of July 2006, 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, Bruce J. Carr, filed an appeal from the Superior Court’s March 1, 2006 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 35(a).¹ 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 Carr’s opening brief that the appeal is without merit. We agree and AFFIRM.

¹ The record reflects that this is Carr’s ninth postconviction motion.

(2) In June 1982, Carr was found guilty by a Superior Court jury of four counts of Kidnapping in the First Degree, four counts of Conspiracy in the First Degree, one count of Rape in the First Degree, and two counts of Attempted Rape in the First Degree. He was sentenced to six consecutive terms of life imprisonment plus 40 years. Carr's convictions and sentences were affirmed by this Court on direct appeal.²

(3) In this appeal, Carr claims that the Superior Court erred as a matter of law by sentencing him to six consecutive life sentences rather than one life sentence.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." Relief under Rule 35(a) is available when the sentence imposed 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 a sentence that the judgment of conviction did not authorize.³

(5) At the time Carr was sentenced, Kidnapping in the First Degree and Rape in the First Degree were classified as Class A felonies, which

² *Carr v. State*, Del. Supr., No. 322, 1982, Horsey, J. (Nov. 9, 1983).

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

required the imposition of life sentences.⁴ Attempted Rape in the First Degree was punishable by up to a life sentence.⁵ Moreover, all of Carr's sentences were required by statute to be consecutive.⁶ Contrary to Carr's arguments in his opening brief, neither the sentencing guidelines, which were not in effect at the time he was sentenced, nor *Evans v. State*, 872 A.2d 539 (Del. 2005), which deals with whether an inmate who receives a parolable life sentence is eligible for conditional release, is relevant to his Rule 35(a) claim. Carr has, thus, failed to demonstrate that his sentences are illegal and that he is entitled to relief under Rule 35(a).

(6) It is manifest on the face of Carr'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, 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/ Carolyn Berger
Justice

⁴ Del. Code Ann. tit. 11, §§ 764,783A, and 4205(b) (1).

⁵ Del. Code Ann. tit. 11, §§ 531 and 4205(b) (1).

⁶ Del. Code Ann. tit. 11, § 3901(d).