

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JESSE J. BRYANT,	§
	§ No. 159, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 92004686DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 24, 2007

Decided: July 18, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 18th day of July 2007, 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, Jesse J. Bryant, filed an appeal from the Superior Court’s February 28, 2007 order, which adopted the Superior Court commissioner’s November 2, 2006 report and recommendation,¹ and denied his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has

¹ Del. Code Ann. tit. 10, § 512(b) (1) (b); Super. Ct. Crim. R. 62(a) (5).

moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.²

We agree and affirm.

(2) In May 1979 a Superior Court jury found Bryant guilty of Murder in the First Degree, Attempted Murder, two counts of Conspiracy in the First Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony, Burglary in the First Degree, and Conspiracy in the Second Degree. He was sentenced to two consecutive terms of life imprisonment, plus 30 years. Bryant's convictions and sentences were affirmed by this Court on direct appeal.³

(3) At the time Bryant committed the crime of Murder in the First Degree, he was subject to only two possible penalties---a mandatory death sentence or life in prison without the possibility of parole.⁴ Prior to Bryant's trial, however, this Court ruled that the mandatory death sentence was unconstitutional and that the appropriate penalty for first-degree murder was life imprisonment without the possibility of parole.⁵ The record reflects that Bryant's original sentencing order did not specify that his life sentences were to be served without benefit of parole.

² Supr. Ct. R. 25(a).

³ *Bryant v. State*, Del. Supr., No. 347, 1979, McNeilly, J. (Nov. 13, 1981).

⁴ Del. Code Ann. tit. 11, §4209(a) (1979).

⁵ *State v. Spence*, 367 A.2d 983, 988-89 (Del. 1976).

(4) In 1991, the State learned that Bryant was seeking release from prison on parole. Upon discovering the omission in Bryant's original sentencing order, the State requested that the Superior Court correct the original sentencing order. On June 11, 1992, the Superior Court issued a corrected order, which explicitly stated that Bryant was not eligible for probation or parole. This Court affirmed the Superior Court's order on appeal.⁶ Rejecting Bryant's argument that his corrected sentence amounted to an unconstitutional *ex post facto* violation, this Court held that, "[N]o enhancement of Bryant's sentence ever took place. Instead, his sentence was simply corrected to reflect the punishment he was required to, and did in fact, receive as a matter of state law."⁷

(5) In this appeal, Bryant claims that the Superior Court's 1992 corrected sentencing order violated his constitutional rights to a jury trial and due process because the sentence was enhanced based on factors that were not submitted to a trier of fact for proof beyond a reasonable doubt.⁸

(6) Bryant's postconviction motion, filed approximately 24 years after his conviction and 14 years after the Superior Court's issuance of the

⁶ *Bryant v. State*, Del. Supr., No. 253, 1992, Moore, J. (Jan. 8, 1993).

⁷ *Id.*

⁸ *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, 542 U.S. 296 (2004).

corrected sentencing order, is time-barred⁹ unless he can demonstrate a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.¹⁰

(7) Bryant has failed to demonstrate that there was a miscarriage of justice in this case. The Superior Court's original sentencing order did not explicitly provide that Bryant could not be considered for parole. In 1992, the Superior Court corrected the sentencing order to explicitly so provide. As this Court previously held, the Superior Court did not enhance Bryant's sentence in so doing, but merely corrected the sentencing order to conform to the dictates of Delaware law. We find no merit to Bryant's claim.¹¹

(8) It is manifest on the face of Bryant'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.

⁹ Super. Ct. Crim. R. 61(i) (1).

¹⁰ Super. Ct. Crim. R. 61(i) (5).

¹¹ *Gibbs v. State*, 229 A.2d 502, 503-04 (Del. 1967) (A trial court may correct its records to conform to the facts even when such correction occurs after commencement of the sentence.)

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/Henry duPont Ridgely
Justice