

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
)
 v.) I.D. 30604628DI
)
 BENJAMIN F. WHITEMAN,)
)
 Defendant.)
)
)

Submitted: October 15, 2002
Decided: October 25, 2002

Upon Defendant's Motion for Correction of Illegal Sentence. **DENIED.**

ORDER

This 25th day of October, 2002, upon review of the Motion for Correction of Illegal Sentence filed by Defendant and the record in this case, it appears that:

(1) Defendant, Benjamin Whiteman, has filed a Motion for Correction of Illegal Sentence pursuant to Superior Court Criminal Rule 35(a). In his motion, Defendant argues that the Court illegally sentenced him as a habitual offender.

(2) In July 1987, the Court sentenced Defendant to ten years incarceration suspended after three years for probation as a result of Defendant's guilty plea to second degree Burglary. Although the Court signed an Order declaring Defendant to be a habitual offender under 11 *Del. C.* § 4214(a), the Court chose not to sentence Defendant as a habitual offender.

(3) In August 1989, a Superior Court jury convicted Defendant of third degree Unlawful Sexual Penetration. The Court subsequently sentenced Defendant to life imprisonment as a habitual offender. The Court determined that, because it had previously found Defendant to be a habitual offender, it did not have to decide the issue again.

(4) In December 2000, Defendant moved the Court to correct his 1989 sentence. Defendant argued that, contrary to the Court's determination that it was unnecessary to revisit Defendant's habitual offender status, his 1989 sentence was illegal because there was no prior order from 1987 declaring him to be a habitual offender. In January 2001, the Court denied the motion on two grounds. First, the Court determined that the Court in 1987 had signed an order declaring Defendant to be a habitual offender. Second, the Court determined that Defendant's motion was to correct a sentence imposed in an illegal manner and so was time barred under Rule 35(a).¹ Defendant appealed and, on October 23, 2001, the Supreme Court affirmed this Court's decision.²

(5) On October 1, 2002, Defendant filed a second Motion for Correction of Illegal Sentence. In his current motion, Defendant makes the same arguments he previously raised in his original motion. As summarized above, the Court previously found

¹ See *State v. Whiteman*, Del. Super., I.D. 30604628DI, Barron, J. (Jan. 10, 2001)(ORDER).

² See *Whiteman v. State*, Del. Supr., No. 40, 2001, Veasey, C. J. (Oct. 23, 2001)(ORDER).

Defendant's arguments to be without merit. There is no need for reconsideration of those arguments.

Therefore, for the foregoing reasons, the Court finds that Defendant's Motion for Correction of Illegal Sentence is hereby **DENIED**.

IT IS SO ORDERED.

Carl Goldstein, Judge

oc: Prothonotary
pc: Benjamin F. Whiteman