

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: July 26, 2005  
Decided: August 25, 2005

STATE OF DELAWARE	)	
	)	
v.	)	ID#: 9503004907
	)	
ANDRE A. RIVERA,	)	
	)	
Defendant.	)	

**ORDER**

1. Pursuant to Superior Court Criminal Rule 35(a), on July 13, 2005, Defendant, *pro se*, filed a motion for correction of an illegal sentence. Rivera also asks for court-appointed counsel and an evidentiary hearing.

2. In 1995, after the Attorney General filed a motion to declare Rivera a habitual offender, the court found that Rivera had been convicted of the necessary predicate offenses, declared him to be a habitual offender and sentenced him as required by 11 *Del. C.* § 4214(b).

3. Now, Rivera claims that the Attorney General has been selectively enforcing the habitual offender statute. Specifically, Rivera alleges: “for many years prosecutors have been targeting 11 *Del. C.* § 4214 towards certain individuals, primary

blacks and Hispanics.”

4. So far, Rivera’s allegation is entirely conclusory. Other than that he was prosecuted under 11 *Del. C. § 4214* and he is Hispanic, Rivera offers no support for his very serious claim. Therefore, as it stands, Defendant has not offered anything justifying relief, including a hearing. Moreover, the claim falls under Superior Court Criminal Rule 61, not Rule 35.<sup>1</sup> And on its face, the claim is too late. It is time-barred under Superior Court Criminal Rule 61 (i)(3).

5. Defendant’s motion is ***DENIED***, without prejudice to Defendant’s providing specific reasons for his claim that in 1995 he was subjected to selective enforcement of the habitual offender statute. If Defendant can show that his motion is based on more than a self-serving assumption, the court will reconsider whether an evidentiary hearing and appointment of counsel is appropriate. If, after thirty (30) days, Rivera fails to supplement his motion as called for here, the dismissal shall be with prejudice.

**IT IS SO ORDERED.**

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Date Judge

oc: Prothonotary (Criminal Division)  
pc: Paul Wallace, Deputy Attorney General  
Andre A. Rivera, *Pro Se* Defendant - DCC

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<sup>1</sup> *Monroe v. State*, 843 A.2d 696 (Del. 2004)(Table).