

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER L. DORSEY,	§
	§ No. 179, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0405007809
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 1, 2007

Decided: December 21, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 21st day of December 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, Christopher L. Dorsey, filed an appeal from the Superior Court's March 20, 2007 order denying his motion to correct 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 the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In September 2004, Dorsey pleaded guilty to Sexual Exploitation of a Child and Unlawful Sexual Contact in the Second Degree. On his first conviction, he was sentenced to 25 years of Level V incarceration, to be suspended after 10 years and successful completion of the Family Problems program for decreasing levels of supervision. On his second conviction, he was sentenced to 2 years at Level V, to be suspended for 2 years at Level III probation. Dorsey had a previous criminal history, including a plea of guilty to a sex crime involving a child.

(3) In this appeal, Dorsey claims that the sentence he received on his conviction of sexual exploitation of a child is illegal because it exceeds the statutory maximum and was improperly enhanced as a “second conviction.”

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.”² Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.³ A sentence also is illegal when it is ambiguous with respect to

¹ Supr. Ct. R. 25(a).

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

³ *Id.*

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.⁴

(5) Dorsey's claim is without any factual support. The total maximum sentence for Dorsey's two convictions is 27 years at Level V,⁵ which Dorsey acknowledged on his signed guilty plea form. There is no evidence that either of Dorsey's sentences exceeds the statutory maximum, violates double jeopardy, or is ambiguous or contradictory. Moreover, the sentencing transcript does not reflect any improper motive on the part of the sentencing judge in imposing the sentences he did.⁶ Given Dorsey's previous criminal history and the fact that he had pleaded guilty to another sex crime involving a child, the Superior Court judge was well within his discretion in sentencing Dorsey.

(6) It is manifest on the face of Dorsey's opening brief that his 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.

⁴ Id.

⁵ Del. Code Ann. tit. 11, §§ 4205(d) and 1108(1); Del. Code Ann. tit. 11, §§ 4333(b) (1) and 768.

⁶ *United States v. Goodwin*, 457 U.S. 368, 373-74 (1982).

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.⁷

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁷ To the extent that Dorsey asserts as a separate claim that he was not afforded a timely opportunity to review the presentence report, that claim is refuted by the transcript of the sentencing hearing, which reflects that Dorsey's counsel reviewed the presentence report.