

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | |
|--------------------|--------------------------------|
| LAFAYETTE MILLER, | § |
| | § No. 418, 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 Nos. 0403022047 |
| | § 0305014989 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: January 25, 2008

Decided: April 21, 2008

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

ORDER

This 21st day of April 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Lafayette Miller, filed an appeal from the Superior Court's July 20, 2007 denial of his fifth motion for correction/reduction of sentence pursuant to Superior Court Criminal Rule 35. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In September 2004, Miller was found guilty by a Superior Court jury of Possession of Cocaine, Possession of Marijuana, Possession of Drug Paraphernalia, Possession of Ammunition by a Person Prohibited, and

two counts of Possession of a Deadly Weapon By a Person Prohibited.¹ He was sentenced to a total of 11 years of Level V incarceration, to be suspended after 6 years for decreasing levels of supervision. This Court affirmed Miller's convictions and sentences on direct appeal.²

(3) In this appeal from the Superior Court's denial of his latest Rule 35 motion, Miller contends that he is entitled to credit for time spent at Level V that he should have received on his current Level V sentence. As a result, Miller claims, the sentence is illegal pursuant to Rule 35(a).

(4) The record reflects that, at the time Miller was arrested on the instant weapon and drug charges, he was on probation in connection with a prior conviction. In April 2004, Miller pleaded guilty to Possession of Marijuana in Cr. I.D. No. 0305014989 and was sentenced to 1 year at Level V, to be suspended for 18 months at Level III. Prior to his guilty plea, Miller was incarcerated in default of bond from May 22, 2003 to August 12, 2003.

(5) Miller subsequently was found to have violated his probation in Cr. ID No. 0305014989. In a separate order dated December 10, 2004, the Superior Court consolidated that probationary sentence with Miller's

¹ Miller was acquitted of the charge of Receiving a Stolen Firearm. The State later dismissed the charges of Possession of a Firearm During the Commission of a Felony, Maintaining a Dwelling, and Conspiracy, on which the jury was unable to return a verdict.

² *Miller v. State*, Del. Supr., Nos. 564, 2004 and 10, 2005, Jacobs, J. (July 12, 2005).

probationary sentence in Cr. I.D. No. 0403022047 and discharged him from probation as unimproved. The State argues, and the Superior Court agrees, that, in so doing, the Superior Court intended to give credit to Miller for the approximately three-month period he was incarcerated in default of bond.

(6) The function of Rule 35(a) is to permit correction of an illegal sentence.³ Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.⁴ A sentence also is illegal when it 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.⁵ Del. Code Ann. tit. 11, §3901(c) requires that an inmate be credited “with any period of actual incarceration,” but only once, not twice.⁶

(7) The record in this case reflects no abuse of discretion on the part of the Superior Court in denying Miller’s Rule 35(a) motion. The Superior Court has latitude to impose a defendant’s sentences in accordance with its over all sentencing plan,⁷ as occurred in this case. In the absence of

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

⁴ *Id.*

⁵ *Id.*

⁶ *Gonzalez v. State*, Del. Supr., No. 482, 2006, Berger, J. (Jan. 8, 2007); *Wilson v. State*, Del. Supr., No. 139, 2000, Walsh, J. (Sept. 12, 2000).

⁷ *Quandt v. State*, Del. Supr., No. 28, 2007, Steele, C.J. (Aug. 3, 2007).

any evidence that Miller was not given proper credit for the time he spent at Level V in default of bond, we conclude that the Superior Court's order should be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice