

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE J. CARR,	§
	§
Defendant Below-	§ No. 584, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 82002234DI
Plaintiff Below-	§
Appellee.	§

Submitted: February 22, 2008  
Decided: May 20, 2008

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 20<sup>th</sup> day of May 2008, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Bruce Carr, filed this appeal from the Superior Court's denial of his motion for correction of sentence. We find no merit to Carr's appeal. Accordingly, we affirm the judgment of the Superior Court.

(2) The record reflects that a Superior Court jury convicted Carr in 1982 of first degree rape and multiple counts of kidnapping, conspiracy, and attempted first degree rape. The Superior Court sentenced him to six consecutive life terms of imprisonment plus an additional 40 years. This

Court affirmed his convictions on direct appeal.<sup>1</sup> Thereafter, Carr filed multiple unsuccessful petitions seeking postconviction relief. Most recently, Carr filed a motion for correction of illegal sentence under Superior Court Criminal Rule 35(a). Carr contended that his sentence is illegal because: (i) the terms are indefinite; (ii) the sentencing order is ambiguous; (iii) the sentence violates double jeopardy principles; and (iv) the sentencing court abused its discretion in sentencing Carr to life imprisonment for attempted first degree rape after dismissing the first degree rape charge. The Superior Court denied Carr's motion on the ground that it was time-barred and because several of the sentences were mandatory and thus not subject to reduction. This appeal followed.

(3) In his opening brief on appeal, Carr argues that the Superior Court's form order failed to consider the merits of his motion for correction of sentence under Superior Court Criminal Rule 35(a) and, instead, improperly, treated his motion as if it were one for sentence reduction under Rule 35(b).<sup>2</sup> Carr points out that there is no time limitation for filing a motion under Rule 35(a). Thus, he argues, the matter should be remanded to the Superior Court for consideration of the merits of his motion.

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<sup>1</sup> *Carr v. State*, 1983 Del. LEXIS 520 (Del. Nov. 9, 1983).

<sup>2</sup> Under Superior Court Criminal Rule 35(a), the Superior Court may correct an illegal sentence "at any time," while a sentence reduction motion under Rule 35(b) must be filed within 90 days of sentencing.

(4) Although it appears that the Superior Court denied Carr's motion for correction of illegal sentence, in part, on the inapplicable ground that it was untimely filed, we nonetheless affirm the trial court's judgment denying the motion on the independent and alternative ground that the motion lacks merit.

(5) Carr's motion first argued that his sentence is illegal because the Superior Court failed to specify a beginning and ending date under 11 *Del. C.* § 3901(a). The Superior Court sentenced Carr to six consecutive life sentences plus 40 years. Despite Carr's apparent contention to the contrary, a term of "life" imprisonment is sufficiently defined under Section 3901(a).<sup>3</sup> Therefore, there is no merit to Carr's first argument.

(6) Carr next argued that his sentence is illegal because it is ambiguous. He contended that the ambiguity is made manifest by the Department of Correction's support of Carr's application for early parole in 1994. We disagree. The Superior Court's sentencing order, which imposed six consecutive life terms (with the possibility of parole) plus an additional 40 years, is clear on its face. The Department of Correction's apparent

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<sup>3</sup> See *Ratliff v. State*, 914 So.2d 938, 940 (Fla. 2005) ("The fact that the judicial system has no way of knowing how long the defendant will live and therefore cannot know how long the defendant will be incarcerated does not render a life sentence unconstitutionally indefinite.")

support of an early parole for Carr does not render the Superior Court's sentencing order ambiguous.<sup>4</sup>

(7) Carr's third argument challenged the constitutionality of his kidnapping convictions and sentences on double jeopardy grounds. This issue, however, was raised and rejected in an earlier postconviction proceeding.<sup>5</sup> Rule 35(a) does not permit a defendant to relitigate settled issues.<sup>6</sup>

(8) Similarly, Carr's final argument, that his life sentence for attempted first degree rape violated double jeopardy in light of his acquittal on the completed charge, was also an issue previously raised and rejected in an earlier postconviction proceeding.<sup>7</sup> Carr cannot litigate that point again through a Rule 35(a) motion.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>4</sup> See *Gibbs v. State*, 229 A.2d 502 (Del. 1967).

<sup>5</sup> *Carr v. State*, 1986 WL 17418 (Del. Sept. 8, 1986).

<sup>6</sup> *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

<sup>7</sup> *State v. Carr*, Del. Super., Cr.A. Nos. IN82-04-1688, *et al.*, Martin, J. (Oct. 17, 1984).