

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICKY D. JACKSON,	§
	§ No. 501, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0505020704
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 20, 2008

Decided: October 31, 2008

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

ORDER

This 31st day of October 2008, 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, Ricky D. Jackson, filed an appeal from the Superior Court's September 9, 2008 order denying his motion for correction of 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. We agree and AFFIRM.

(2) In June 2006, Jackson pleaded guilty to Manslaughter as a lesser-included offense of Murder in the Second Degree. He was sentenced to twenty-five years incarceration at Level V, to be suspended after sixteen years for four years at Level IV, in turn to be suspended after one year at Level IV Halfway House for two years of Level III probation. Jackson did not file a direct appeal from his conviction and sentence.

(3) In this appeal, Jackson claims that the Superior Court should have granted his motion for correction of an illegal sentence under Rule 35(a) because his probationary sentence violates Del. Code Ann. tit. 11, § 4333(b) (1). That statute provides that “[t]he length of any period of probation or suspension of sentence shall be limited to . . . [t]wo years, for any violent felony in this title as designated in § 4201(c) of this title” Manslaughter is designated in § 4201(c) as a violent felony.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.¹ 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

¹ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

substance, or is a sentence that the judgment of conviction did not authorize.²

(5) Jackson's sentence is consistent with the requirements of § 4333(b) (1), since it requires that he spend only two years at Level III probation. To the extent Jackson assumes that his sentence of one year at Level IV Halfway House constitutes another year of probation, that assumption is incorrect. Under § 4333(g) (2), the phrase "period of probation or suspension of sentence" contained in § 4333(b) (1) does not include any period of a sentence designated by the sentencing court to be served at Level IV. Thus, because Jackson's claim of an illegal sentence lacks a factual basis, we conclude that it is without merit.

(6) It is manifest on the face of Jackson'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.

² *Id.*

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

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