

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DOUGLAS W. SHORT, II,	§
	§
Defendant Below-	§ No. 364, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0704027597
Plaintiff Below-	§
Appellee.	§

Submitted: September 23, 2008

Decided: December 11, 2008

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

ORDER

This 11th day of December 2008, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Douglas Short, filed this appeal from the Superior Court's denial of his motion for correction of an illegal sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Short's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Short pled guilty in September 2007 to two counts of third degree rape. That same day, the Superior Court sentenced Short on the first count to ten years at Level V incarceration, to be

suspended after serving two years and successfully completing the Family Problems program for one year at Level IV home confinement followed by six years of probation. On the second count, the Superior Court sentenced Short to ten years at Level V incarceration, to be suspended after serving two years for six years of concurrent probation. Short did not appeal.

(3) In March 2008, Short filed a motion for modification of sentence, which the Superior Court denied. In June 2008, he filed a motion for correction of illegal sentence arguing that Department of Correction officials are misreading the Superior Court's sentencing order. According to Short, he is only required to serve one mandatory two-year prison term and that his second two-year term may be suspended upon his successful completion of the Family Problems program. The Superior Court denied his motion, holding that Short must serve four years at Level V incarceration and successfully complete the Family Problems program. Short appeals that ruling.

(4) After careful consideration of the parties' respective positions on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated July 2, 2008. The Superior Court's sentencing order is not ambiguous or illegal.

Short pled guilty to two class B felonies.¹ Under Delaware law, the statutory sentencing range on a class B felony is a minimum of two years and a maximum of twenty-five years at Level V incarceration.² The sentences imposed by the Superior Court fell within this range, and the sentencing order unequivocally requires Short to serve four years in prison and complete the Family Problems program before his sentence is suspended for lesser supervision. Thus, there is no merit to Short's appeal.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ See Del. Code Ann. tit. 11, § 771 (2007) (classifying third degree rape as a class B felony).

² Del. Code Ann. tit. 11, § 4205(b)(2) (2007).