

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARSHALL L. RIVERS,	§	
	§	No. 245, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0706036080
Appellee.	§	

Submitted: September 17, 2008

Decided: December 16, 2008

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

ORDER

This 16th day of December 2008, upon consideration of the appellant’s opening brief, the State’s motion to affirm and the Superior Court record, it appears to the Court that:

(1) The appellant, Marshall L. Rivers, filed this appeal from the Superior Court’s order denying his motion for correction of illegal sentence pursuant to Rule 35(a) (“Rule 35(a) motion”). Rivers sought relief on the ground that (a) his violation of probation (VOP) sentence exceeded Truth-in-Sentencing (TIS) guidelines; (b) the police gave “irrelevant testimony” at his

VOP hearing; and (c) the police were biased against him. None of Rivers' claims is a basis for relief.

(2) On December 18, 2007, Rivers pled guilty to Distribution of a Controlled Substance within 300 Feet of a Church and Resisting Arrest (collectively "the 2007 convictions"). In exchange for the guilty plea, the State agreed to dismiss other pending charges. Rivers was sentenced for the 2007 convictions to a total of ten years at Level V imprisonment suspended for nine months at Level IV work release followed by three years at Level III probation.

(3) On February 7, 2008, an administrative warrant issued alleging that Rivers had violated his probation by being arrested for new drug charges and for failing to abide by his probation curfew. After a fast track VOP hearing on April 10, 2008, Rivers was found guilty of violation of probation and resentenced for the 2007 convictions to a total of ten years at Level V imprisonment, suspended after five years for two years at Level III probation.

(4) On May 1, 2008, Rivers filed a *pro se* Rule 35(a) motion. By order dated May 7, 2008, the Superior Court summarily denied the motion. This appeal followed.

(5) A VOP sentencing exceeding TIS sentencing guidelines is not illegal.¹ Rivers' VOP sentence is within the statutory limits and is not illegal.²

(6) The narrow function of a Rule 35(a) motion is to correct an illegal sentence.³ A Rule 35(a) motion may not be used to reexamine errors occurring in the proceedings prior to the imposition of sentence.⁴

(7) Rivers' allegations concerning irrelevant police testimony and police bias are directed to the validity of his convictions rather than to the legality of his sentence. As such, Rivers' claims are not properly raised in a Rule 35(a) motion.

(8) It is manifest on the face of Rivers' opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

¹ *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).

² *See* Del. Code Ann. tit. 16, § 4768(a) (2003) (providing that any person who illegally distributes a controlled substance within 300 feet of a church shall be imprisoned for a term of not more than fifteen years); Del. Code Ann. tit. 11, § 1257 (2007) (providing that resisting arrest is a class G felony); Del. Code Ann. tit. 11, § 4205(b)(7) (providing that a term of incarceration for a class G felony is up to two years at Level V). *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1988).

⁴ *Id.*

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice