

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JIMMIE LEWIS,	§
	§ No. 250, 2009
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. 0305016966
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 5, 2009  
Decided: September 8, 2009

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

**ORDER**

This 8th day of September 2009, 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, Jimmie Lewis, filed an appeal from the Superior Court’s April 22, 2009, 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 October 2003, Lewis was found guilty by a Superior Court jury of Carjacking, Theft, and Resisting Arrest. On the carjacking conviction, he was sentenced to five years incarceration at Level V. On the theft conviction, he was sentenced to two years at Level V, to be suspended after one year for one year at Level IV Plummer Center, in turn to be suspended after six months for Level III probation. The sentencing order reflects that Lewis was to be held at Level V until space was available at Level IV. On the conviction of resisting arrest, he was sentenced to one year at Level V, to be suspended for one year at Level II probation. This Court affirmed Lewis' convictions on direct appeal.<sup>1</sup> Lewis' three previous postconviction motions were denied by the Superior Court. Lewis' subsequent appeals of those denials to this Court were unsuccessful.<sup>2</sup>

(3) In Lewis' appeal from his latest postconviction motion, he claims that his sentence is illegal because he was forced to remain at Level V custody awaiting an opening at Level IV for more than ninety days. He seeks release from any further Level V or Level IV custody.

(4) The record reflects that Lewis began serving his Level IV sentence on December 21, 2008. At that time, he was still incarcerated at

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<sup>1</sup> *Lewis v. State*, Del. Supr., No. 64, 2005, Berger, J. (Sept. 29, 2005).

<sup>2</sup> *Lewis v. State*, Del. Supr., No. 536, 2006, Jacobs, J. (Dec. 12, 2006); *Lewis v. State*, Del. Supr., No. 233, 2007, Jacobs, J. (Nov. 15, 2007); *Lewis v. State*, Del. Supr., No. 161, 2008, Steele, C.J. (July 14, 2008).

Level V awaiting space at Level IV. On December 24, 2008, three days later, Lewis was transferred to the VOP Center, where he remained for ninety-eight days. On April 1, 2009, he was moved to the Webb Community Corrections Center for fourteen days. Two weeks later, he was transferred to the Plummer Center, where he served thirty-eight days before being released to Level III probation on May 23, 2009. The record further reflects that Lewis is now living in North Carolina.

(5) Because Lewis is no longer in the custody of the Department of Correction, his claim is moot. His claim is without merit in any case. Because there is no evidence that Lewis' sentence exceeds the statutorily-authorized limits, is internally contradictory or ambiguous, or violates double jeopardy, his claim is not cognizable under Rule 35(a).<sup>3</sup> As such, the judgment of the Superior Court must be affirmed.

(6) It is manifest on the face of the opening brief that the appellant's appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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

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