

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK M. RAMIREZ,	§
	§ No. 133, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0708029559
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 24, 2010
Decided: August 3, 2010

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

ORDER

This third day of August 2010, 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, Patrick M. Ramirez, filed an appeal from the Superior Court’s February 9, 2010 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.¹ We agree and affirm.

(2) The record reflects that, in June 2008, Ramirez, with the assistance of counsel, pleaded guilty to two counts of Delivery of Cocaine. He admitted that he was eligible for sentencing as a habitual offender under Del. Code Ann. tit. 11, §4214(a). Ramirez was sentenced as a habitual offender to a total of eleven years of Level V incarceration. Ramirez did not file a direct appeal, but did submit a motion for correction of sentence, which the Superior Court denied. The Superior Court docket sheet reflects that, in addition to his motion for correction of sentence, Ramirez also filed a postconviction motion pursuant to Rule 61. The Superior Court advised Ramirez that his motion was not in proper form and that it should be re-filed once the instant appeal had been decided.

(3) In this appeal, Ramirez presents claims related to his postconviction motion rather than his motion for correction of sentence.

(4) Under Rule 35(a), a motion for correction of sentence is designed to address only illegal sentences---that is, sentences outside the statutory limits, sentences that violate double jeopardy, sentences that are ambiguous or internally contradictory, or sentences that omit a statutorily-

¹ Supr. Ct. R. 25(a).

required term.² There is no evidence in the record before us that Ramirez' sentences are illegal in any respect. Because there is no basis for a Rule 35(a) claim, we conclude that the judgment of the Superior Court must be affirmed.

(5) It is manifest on the face of the opening brief that this 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.

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

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