

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY D. MARVEL,	§
	§ No. 488, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0510007925
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 13, 2010

Decided: September 20, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 20th day of September 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, Larry D. Marvel, appeals from the Superior Court's July 16, 2010 order denying his motion to correct his 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 Marvel was found guilty by a Superior Court jury of Criminal Solicitation in the Second Degree and Conspiracy in the Second Degree. He was sentenced as a habitual offender on the criminal solicitation conviction to life in prison pursuant to Del. Code Ann. tit. 11, §4214(a) and to an additional 2 years at Level V on the conspiracy conviction. This Court affirmed Marvel's convictions on direct appeal.² Thereafter, Marvel filed two motions for correction of illegal sentence and one motion for postconviction relief under Rule 61, all of which the Superior Court denied. This Court affirmed all three Superior Court decisions.³

(3) On this latest appeal, Marvel claims that his sentence is illegal because there are “substantive defects within the second and third supposed predicate offenses” used as support for his status as a habitual offender. Specifically, Marvel contends that the State may not use his previous overlapping convictions of Unlawful Imprisonment and Rape in the Second Degree as predicate felonies because they were not “each successive to the other, with some chance of rehabilitation,” as required by Del. Code Ann. tit.

¹ Supr. Ct. R. 25(a).

² *Marvel v. State*, Del. Supr., No. 548, 2006, Berger, J. (Sept. 18, 2007).

³ *Marvel v. State*, Del. Supr., No. 11, 2008, Jacobs, J. (Apr. 23, 2008); *Marvel v. State*, Del. Supr., No. 345, 2008, Jacobs, J. (Sept. 10, 2008); *Marvel v. State*, Del. Supr., No. 330, 2009, Holland, J. (July 21, 2009).

11 § 4214. Marvel also claims that the starting date for his life sentence is erroneous, thereby providing him with less credit time than that to which he is entitled.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” On a Rule 35(a) claim of an illegal sentence, relief is available when the sentence imposed exceeds the statutorily-authorized limits, violates double jeopardy, 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 substance, or is a sentence that the judgment of conviction did not authorize.⁴ A proceeding under the Rule is not intended to re-examine errors alleged to have occurred before the imposition of sentence.⁵

(5) Marvel’s first claim is that there was insufficient support for the Superior Court’s finding that he is a habitual criminal. The record reflects that Marvel was convicted of Grand Larceny in 1973, Unlawful Imprisonment in the First Degree and Rape in the Second Degree in 1980, and Unlawful Sexual Intercourse in the Second Degree in 1990. Either the unlawful imprisonment conviction or the rape conviction qualifies as a second conviction for purposes of habitual offender status under Del. Code

⁴ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁵ *Id.*

Ann. tit. 11, §4214(a). As such, the State provided sufficient support for Marvel's status as a habitual offender and therefore his sentence is not illegal under Rule 35(a). Equally meritless is Marvel's second claim that the start date on his life sentence is erroneous. Marvel must serve the remainder of his life in prison. There is no indication that the start date of his sentence, erroneous or not, has any "significant current impact" on him or presents any "actual controversy" ripe for consideration by this Court.⁶

(6) 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's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ *Govan v. State*, Del. Supr., No. 256, 2003, Berger, J. (Sept. 24, 2003) (citing *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 480 (Del. 1989)).