

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROGER M. ELLERBE,	§
	§ No. 453, 2010
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. 0009022190
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 4, 2010  
Decided: November 22, 2010

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

**ORDER**

This 22<sup>nd</sup> day of November 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, Roger M. Ellerbe, filed an appeal from the Superior Court's June 23, 2010 order denying his motion for correction of 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.<sup>1</sup> We agree and affirm.

(2) The record reflects that, in December 2000, Ellerbe pleaded guilty to Possession of Narcotics, Possession of a Firearm By a Person Prohibited and Possession of a Weapon in a School Zone. He was sentenced on his first conviction to 3 years incarceration at Level V, to be followed by 1 year at Level IV.<sup>2</sup> He was sentenced on his second conviction to 8 years at Level V, to be followed by 1 year at Level IV. Finally, on his third conviction, he was sentenced to 5 years at Level V, to be followed by 1 year at Level IV. Ellerbe did not file a direct appeal of his convictions. He subsequently filed 2 motions for postconviction relief, both of which were denied by the Superior Court.

(3) In his appeal from the Superior Court's denial of his motion to correct an illegal sentence, Ellerbe seeks vacation of his conviction of possession of a weapon in a school zone. The ground for his claim is that the offense underlying his conviction (possession of a deadly weapon by a person prohibited under §1448) is described in §1457(b)(4) as a Class F

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> Ellerbe's 3-year sentence was subsequently reduced to 1 year.

felony, not a Class D felony. Therefore, Ellerbe argues, his conviction of and sentencing for a Class D felony is illegal.<sup>3</sup>

(4) The provisions of the Delaware criminal code must be construed to promote justice and effectuate the purposes of the law.<sup>4</sup> Moreover, the criminal statutes are to be construed so as to avoid mischievous or absurd results.<sup>5</sup> If the criminal statutes were interpreted in the manner suggested by Ellerbe, the Legislature would have intended to punish one in possession of a firearm in a school less harshly than one in possession of a knife, an absurd result. Moreover, §1448(c) specifically states that “possession of a deadly weapon by a person prohibited is a Class F felony, unless said deadly weapon is a firearm . . . , in which case it is a Class D felony.” As such, we conclude that the Superior Court correctly rejected Ellerbe’s statutory interpretation and correctly denied his motion for correction of an illegal sentence.

(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.

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<sup>3</sup> Ellerbe also claims, for the first time in this appeal, that he did not plead guilty to a Class D felony, but to a Class F felony.

<sup>4</sup> Del. Code Ann. tit. 11, §203.

<sup>5</sup> *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.<sup>6</sup>

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>6</sup> Because Ellerbe's claim that he pleaded guilty to a Class F felony was not presented to the Superior Court in the first instance, we decline to address it. Supr. Ct. R. 8.