

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL FELICIANO,	§
	§ No. 304, 2011
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. 0701008834
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 31, 2011

Decided: September 7, 2011

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

**ORDER**

This 7<sup>th</sup> day of September 2011, 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, Daniel Feliciano, filed an appeal from the Superior Court’s May 26, 2011 order denying his second 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.<sup>1</sup> We agree and affirm.

(2) The record reflects that, in January 2007, Feliciano was arrested while in possession of more than 35 grams of heroin and was charged with several drug offenses in Cr. ID No. 0701008834. As a result of his arrest, Feliciano also was charged with a violation of probation ("VOP") in Cr. ID No. 0601011362. In May 2007, Feliciano pleaded guilty to Possession With Intent to Deliver Heroin. Following his guilty plea, Feliciano was sentenced in Cr. ID No. 0701008834 to 20 years of Level V incarceration, to be suspended after 8 years for 6 months at Level IV, to be followed by 18 months at Level III probation. Feliciano also was found to have committed a VOP in Cr. ID No. 0601011362 and was discharged as unimproved.

(3) In this appeal from the Superior Court's denial of his second motion for correction of an illegal sentence, Feliciano claims that the Superior Court erred when it sentenced him to Level V time for his probation violation.

(4) The narrow function of Rule 35(a) is to permit correction of an illegal sentence, not to re-examine alleged errors that occurred during the

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

trial or other proceedings prior to the imposition of sentence.<sup>2</sup> Under Delaware law, a sentence is illegal only if it exceeds the statutory 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 was not authorized by the judgment of conviction.<sup>3</sup>

(5) Because Feliciano's sentence does not exceed the statutory maximum,<sup>4</sup> does not implicate double jeopardy and is neither ambiguous nor contradictory, he is not entitled to relief under Rule 35(a). As a factual matter, Feliciano is incorrect that the Superior Court imposed a Level V sentence for his VOP. His Level V sentence was imposed only in connection with his plea of guilty to Possession With Intent to Deliver Heroin. Feliciano's VOP was discharged as unimproved.

(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.

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

<sup>3</sup> *Id.*

<sup>4</sup> Del. Code Ann. tit. 16, § 4763(a) (1) d. and tit. 11, § 4205(b) (3).

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