

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOWARD WALSH,	§	
	§	No. 23, 2016
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware
v.	§	
	§	Cr. ID No. 1410004172
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 22, 2016
Decided: March 16, 2016

Before **STRINE**, Chief Justice; **HOLLAND**, and **SEITZ**, Justices.

ORDER

This 16th day of March 2016, upon consideration of the notice to show cause and the appellant's response, it appears to the Court that:

(1) After a two-day trial, a Superior Court jury convicted the appellant, Howard Walsh, of three counts of Possession of a Firearm by a Person Prohibited and other offenses. The Superior Court sentenced Walsh on November 6, 2015. Walsh's direct appeal is pending in this Court.¹

¹ The Court has taken judicial notice of Walsh's direct appeal proceeding as *Walsh v. State*, No. 612, 2015. The docket reflects that Walsh is proceeding *pro se* on appeal and has filed the opening brief.

(2) On December 10, 2015, Walsh filed a “motion for reduction and correction of sentence” under Superior Court Criminal Rule 35. Under Rule 35(b), the Superior Court “may decide [a motion for reduction of sentence] or defer decision while an appeal is pending.”² In this case, the Superior Court elected to defer consideration of Walsh’s motion for reduction and correction of sentence until this Court has decided Walsh’s direct appeal.

(3) Walsh filed this appeal from the Superior Court’s December 17, 2015 order deferring consideration of his motion for reduction and correction of sentence. Upon receipt of the appeal, the Clerk directed Walsh to show cause why the appeal should not be dismissed for this Court’s lack of jurisdiction to consider an appeal from an interlocutory order in a criminal matter.³

(4) In response to the notice to show cause, Walsh contends that the Superior Court’s order deferring consideration of his motion for reduction and correction of sentence is a violation of his right of due process because, under Rule 35(a), the court can correct an illegal sentence “at any time.”⁴ Walsh’s response does not address the jurisdictional issue raised in the notice to show cause.

² Del. Super. Ct. Crim. R. 35(b).

³ See Del. Supr. Ct. R. 29(b) (governing involuntary dismissal upon notice of the Court).

⁴ See Del. Super. Ct. Crim. R. 35(a) (“The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.”).

(5) Under the Delaware Constitution only a final judgment may be reviewed by the Court in a criminal case.⁵ In this case, the Court concludes that the Superior Court's December 17 order deferring consideration of Walsh's motion for reduction and correction of sentence is not a final order and is not appealable as a collateral order before the entry of a final order on the motion.⁶

NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rule 29(b), that Walsh's appeal from the Superior Court's order deferring consideration of his motion for reduction and correction of sentence is DISMISSED.

BY THE COURT:

/s/ Leo E. Strine, Jr.

Chief Justice

⁵ Del. Const. art. IV, § 11; *Rash v. State*, 318 A.2d 603, 604 (Del. 1974).

⁶ *Church v. State*, 2015 WL 1243731 (Del. Mar. 17, 2015) (citing *Gottlieb v. State*, 697 A.2d 400, 402 (Del. 1997)).