

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LLOYD L. ANDERSON,	§
	§
Defendant Below-	§ No. 218, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN96-12-0523-0525
Plaintiff Below-	§ IN96-12-1107
Appellee.	§

Submitted: May 28, 2003

Decided: June 24, 2003

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

**ORDER**

This 24<sup>th</sup> day of June 2003, 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, Lloyd L. Anderson, filed an appeal from the Superior Court's March 28, 2003 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 judgment of the Superior Court on the ground that it is manifest on the face of Anderson's opening brief that the appeal is without merit. We agree and **AFFIRM**.

(2) In December 1996, Anderson was indicted by the grand jury for Possession With Intent to Deliver Marijuana, Trafficking in Marijuana, Conspiracy in the Second Degree and Maintaining a Vehicle for Keeping Controlled Substances. Following a Superior Court jury trial in February 1998, Anderson was found not guilty of conspiracy and maintaining a vehicle. The jury was unable to reach a verdict on the other two charges and the Superior Court declared a mistrial.

(3) In September 1998, another Superior Court jury found Anderson guilty of the possession and trafficking charges. He was sentenced to a total of 12 years incarceration at Level V, to be suspended after 5 years for 9 months of probation at Level IV. Anderson's convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup> The Superior Court's denial of Anderson's motion for postconviction relief was also affirmed by this Court.<sup>2</sup>

(4) Anderson completed the Level V portion of his sentence in December 2002. However, because he is subject to an outstanding Immigration and Naturalization Service ("INS") detainer that would result in his immediate deportation to Jamaica once he is released to Level IV probation, Department

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<sup>1</sup>*Anderson v. State*, Del. Supr., No. 364, 1999, Walsh, J. (Mar.7, 2000).

<sup>2</sup>*Anderson v. State*, Del. Supr., No. 97, 2002, Walsh, J. (Aug. 30, 2002).

of Correction policy requires him to serve his 9-month Level IV sentence at Level V unless the sentencing order is modified by the Superior Court.<sup>3</sup>

(5) In this appeal, Anderson claims that the sentence he is now serving is illegal because it is contrary to the intent of the Superior Court’s original sentencing order. Anderson asks that the probationary portion of his sentence be eliminated so that he may be released to the INS for immediate deportation to Jamaica.

(6) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” “The ‘narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.’”<sup>4</sup> “Relief under Rule 35(a) is available ‘when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy Clause . . . .’”<sup>5</sup> “A sentence is also illegal if it ‘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

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<sup>3</sup>On February 5, 2003, the Superior Court denied a request from the Department of Correction for modification of Anderson’s sentence so that the issue of the INS detainer could be resolved.

<sup>4</sup>*Tatem v. State*, 787 A.2d 80, 81 (Del. 2001).

<sup>5</sup>*Id.*

uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.”<sup>6</sup>

(7) Anderson does not contend that his sentence was outside the statutory authorization, amounted to double jeopardy, or was ambiguous or contradictory. He claims only that the Superior Court did not take account of his problem with the INS when it sentenced him. Because that claim would require an examination of the proceedings leading up to the imposition of sentence, no relief is available to Anderson under Rule 35(a).<sup>7</sup>

(8) It is manifest on the face of Anderson’s 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, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey

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<sup>6</sup>Id.

<sup>7</sup>Moreover, in its March 28, 2003 order, the Superior Court stated that it would have imposed the same sentence even if it had known about Ferguson’s problem with the INS.

Chief Justice