

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| DENNIS A. FRAZIER, | § |
| | § No. 130, 2003 |
| Defendant Below- | § |
| Appellant, | § Court Below—Superior Court |
| | § of the State of Delaware, |
| v. | § in and for New Castle County |
| | § Cr.A. Nos. IN88-09-0214 thru |
| STATE OF DELAWARE, | § -0221 and IN89-01-0625 thru |
| | § -0627 |
| Plaintiff Below- | § Cr. ID 30805884DI |
| Appellee. | § |

Submitted: May 12, 2003

Decided: June 17, 2003

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

ORDER

This 17th day of June 2003, upon consideration of the opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Dennis Frazier, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the basis of Frazier's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Frazier in 1990 of five counts of unlawful sexual intercourse and related kidnapping and weapon offenses, which occurred in August 1988. The Superior Court

sentenced Frazier to several terms of life imprisonment plus 100 years. This Court affirmed Frazier's convictions on direct appeal.¹ Since that time, Frazier filed unsuccessfully for postconviction relief. Most recently, Frazier filed a motion for correction of sentence under Superior Court Criminal 35(a), which the Superior Court treated as a motion for reduction of sentence pursuant to Superior Court Criminal Rule 35(b). The Superior Court denied Frazier's motion as untimely. This appeal followed.

(3) Frazier asserts that the Superior Court erred in denying his motion as untimely because Rule 35(a) permits the Superior Court to correct an illegal sentence at any time.² Frazier asserts that his sentences were illegal because he was convicted of first degree unlawful sexual intercourse, but the Superior Court illegally sentenced him for first degree rape. The effect of the Superior Court's illegal sentence, according to Frazier, is that the first twenty years of each of his life sentences carries no parole eligibility. Frazier requests that his sentences be amended to eliminate the mandatory twenty-year term for each of his life sentences.

(4) The State agrees that the Superior Court incorrectly interpreted Frazier's motion for correction of sentence as a motion for reduction of

¹ *Frazier v. State*, 1992 WL 135149 (Del. Mar. 13, 1992).

² DEL. SUPER. CT. CRIM. R. 35(a).

sentence. Nonetheless, the State asserts that the Superior Court's judgment should be affirmed because Frazier's motion stated no basis for correction of sentence. According to the State, at the time of Frazier's crimes in 1988, the sentence for first degree unlawful sexual intercourse was life imprisonment with no parole eligibility for the first twenty years.³ Accordingly, the State asserts that Frazier's life sentences are entirely proper.

(5) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed. Frazier's motion stated no basis for relief under Superior Court Criminal Rule 35(a). Frazier's claim is foreclosed by this Court's decision in *Wicks v. State*.⁴ Accordingly, the Superior Court did not err or abuse its discretion in denying Frazier's motion for correction of an illegal sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

³ See *Wicks v. State*, 559 A.2d 1194 (Del. 1989) (recounting statutory history).

⁴ *Id.*