

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARWIN A. SAVAGE,	§	
	§	No. 254, 2003
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	PS01-03-0280 - 0284; IS01-
STATE OF DELAWARE,	§	04-0384.
	§	
Plaintiff Below	§	
Appellee.	§	Def. ID No. 0102021014

Submitted: July 29, 2003

Decided: October 7, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 7th day of October 2003, upon consideration of the appellant's opening brief and appendix and the State's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) Darwin Savage filed an appeal from the Superior Court's order of April 15, 2003, that denied his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The State has filed a motion to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) By amended indictment, a Sussex County grand jury charged Savage with Possession with Intent to Deliver Cocaine, Maintaining a Vehicle for Keeping Controlled Substances, Endangering the Welfare of a Child, Possession of a Drug Paraphernalia, and Driving While Suspended or Revoked. After a jury trial in September 2001, Savage was found guilty on all charges.

(3) In January 2002, the Superior Court granted Savage's motion for a new trial. Prior to trial, however, Savage pleaded guilty to Possession of a Firearm by a Person Prohibited, Possession with Intent to Deliver Marijuana, Driving While Suspended or Revoked, Possession of Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Maintaining a Vehicle for Controlled Substances.

(4) Prior to sentencing, Savage moved to withdraw his guilty plea. The Superior Court denied Savage's motion to withdraw. The Superior Court then sentenced Savage to a total of twenty-two years at Level V, suspended after serving nine years and upon successful completion of the Key Program, for one year at a Level IV residential substance abuse treatment program, followed by one year of Level III aftercare, followed by decreasing levels of

probation. On direct appeal, Savage's convictions and sentences were affirmed pursuant to Supreme Court Rule 26(c).¹

(5) In April 2003, Savage moved *pro se* for a correction of his sentence pursuant to Superior Court Criminal Rule 35(a). Savage alleged that one of the charges to which he had pleaded guilty, *i.e.*, Possession of a Firearm By a Person Prohibited, had been dismissed prior to trial. By order dated April 15, 2003, the Superior Court denied Savage's Rule 35(a) motion on the basis that the claim must be raised in a Superior Court Criminal Rule 61 motion. This appeal followed.

(6) On appeal, Savage argues that the Superior Court erred when concluding that Savage's claim was not properly raised in a Rule 35(a) motion. Savage contends that he raised a double jeopardy claim that was properly justiciable under Rule 35(a).² Savage's argument, however, is unavailing.

(4) It is true that Savage's Rule 35(a) motion argued that his sentence violated double jeopardy. Savage's sentencing claim was based, however, on a claim that the Superior Court lacked jurisdiction to convict him of the offense

¹*Savage v. State*, 2003 WL 214963 (Del. Supr.).

²“Relief under Rule 35(a) is available ‘when the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause . . .’” *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998) (quoting *United States v Pavlico*, 961 F.2d 440, 443 (4th Cir. 1992)).

of Possession of a Firearm by a Person Prohibited. Since Savage’s claim, at its foundation, attacked the validity of his conviction, it was not properly brought in a Rule 35(a) motion. ““A proceeding under Rule 35 presupposes a valid conviction.””³ The limited function of Rule 35 is to allow ““correction of an illegal sentence, not to re-examine errors occurring at trial or other proceedings prior to the imposition of sentence.””⁴

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/ Carolyn Berger
Justice

³*Id.* (quoting *Whitfield v. United States*, 401 F.2d 480, 483 (9th Cir. 1968)).

⁴*Id.* (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).