

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD McNAIR,	§
	§
Defendant Below-	§ No. 145, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN96-08-0853, -0854,
	§ -0857, and 0858
Plaintiff Below-	§ Cr. ID 9608002165
Appellee.	§

Submitted: April 14, 2003

Decided: May 27, 2003

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

**ORDER**

This 27<sup>th</sup> day of May 2003, upon consideration of the opening brief and the State's motion to affirm, it appears to the Court that:

(1) Following a jury trial, the defendant-appellant, Edward McNair, was convicted in 1996 of trafficking in cocaine, possession with intent to deliver cocaine, maintaining a vehicle, and second degree conspiracy. The Superior Court sentenced McNair to a total period of fourteen years at Level V incarceration to be suspended after serving ten years minimum mandatory for four years at decreasing levels of supervision. This Court affirmed

McNair's convictions and sentences on direct appeal.<sup>1</sup> Since that time, McNair has filed unsuccessfully for postconviction relief and for modification of his sentence. In December 2002, McNair filed a motion seeking to correct his sentence,<sup>2</sup> which the Superior Court denied. This appeal followed.

(2) In his opening brief on appeal, McNair asserts that the Superior Court abused its discretion by denying his motion for correction of an illegal sentence. McNair argues that: (i) the evidence was insufficient to support his convictions; and (ii) his respective sentences for trafficking and possession with intent to deliver violate principles of double jeopardy. The State filed a motion to affirm the Superior Court's judgment. The State asserts: (i) McNair's complaint about the sufficiency of the evidence is not properly within the scope of a motion for correction of sentence under Rule 35(a);<sup>3</sup> and (ii) McNair's double jeopardy argument is foreclosed by well-established Delaware law.<sup>4</sup>

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<sup>1</sup> *McNair v. State*, 1997 WL 753403 (Del. Nov. 25, 1997).

<sup>2</sup> DEL. SUPER. CT. CRIM. R. 35(a) (stating, in part, that the sentencing court "may correct an illegal sentence at any time. . .").

<sup>3</sup> *See Tatem v. State*, 787 A.2d 80, 81-82 (Del. 2001) (claims that require an examination of the proceedings leading up to the imposition of sentence are not properly within the scope of motion under Rule 35(a)).

<sup>4</sup> *State v. Skyers*, 560 A.2d 1052, 1054-55 (Del. 1989) (defendant's convictions and sentences for trafficking and possession with intent to deliver did not violate double jeopardy principles).

(3) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed. McNair's motion stated no basis for relief under Superior Court Criminal Rule 35(a). McNair's double jeopardy claim, which was the only claim he raised that could properly be considered under Rule 35(a), is foreclosed by this Court's decision in *State v. Skyers*.<sup>5</sup> Accordingly, the Superior Court did not err or abuse its discretion in denying McNair'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/ Myron T. Steele  
Justice

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