

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NOAH A. HUGHES,	§
	§
Defendant Below-	§ No. 189, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. VN98-06-0129-01
Plaintiff Below-	§ VN98-06-0130-01
Appellee.	§

Submitted: September 6, 2002

Decided: October 15, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 15th day of October 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Noah A. Hughes, filed an appeal from the Superior Court's March 18, 2002 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Hughes makes a number of claims, which may fairly be summarized as follows: a) he was improperly denied credit for time spent in boot camp; b) the denial of credit for time spent in boot camp violates double jeopardy because it amounts to being punished twice for the

same crime; and c) the boot camp statute violates equal protection because some defendants are given credit for time spent at boot camp while others are not.

(3) In October 1998, Hughes pleaded guilty to Trafficking in LSD and Possession with Intent to Deliver LSD. Sentencing was deferred pending Hughes' entrance into the first offender boot camp diversion program.¹ In September 2000, Hughes pleaded guilty to Possession of a Deadly Weapon by a Person Prohibited, Possession of a Controlled Substance Within 1000 Feet of a School, and Use of a Vehicle for Keeping Controlled Substances. Hughes' probation in connection with the 1998 charges was revoked and he was sentenced² to a total of 10 years incarceration at Level V, to be suspended after 4 years for decreasing levels of probation.³

(4) 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

¹DEL. CODE ANN. tit. 11, § 6712.

²Pursuant to SUPER. CT. CRIM. R. 11(e) (1) (C).

³The sentencing order explicitly stated that Hughes would be given credit for time spent waiting to enter the boot camp program, but not for time spent in the program.

trial or other proceedings prior to the imposition of sentence.⁴ Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-imposed limits, or violates the Double Jeopardy Clause.⁵ 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 uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.⁶

(5) Pursuant to the first offender boot camp diversion program statute, the Superior Court is mandated to impose a defendant's entire deferred sentence upon a finding of a violation of probation.⁷ Moreover, the statute clearly states that "[n]o credit time shall be given for any time spent in boot camp, Level IV or Level III" and, furthermore, that any sentence in violation of this provision will constitute an illegal sentence.⁸ There is, thus,

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

⁵*Id.*

⁶*Id.*

⁷DEL. CODE ANN. tit. 11, § 6712(h).

⁸*Id.*

no merit to Hughes' claim that he is entitled to credit for the time he spent at boot camp.⁹

(6) Hughes also claims that the denial of credit for time spent at boot camp constitutes a violation of double jeopardy. Double jeopardy is implicated only when a defendant is subjected to multiple sentences for the same offense.¹⁰ Double jeopardy is not implicated in this case, since Hughes voluntarily elected to participate in the boot camp program as a means to avoid serving a Level V sentence and he voluntarily agreed to the imposition of his deferred Level V sentence if he did not successfully complete the program. Hughes voluntary decision to participate in the boot camp program, with full knowledge of its conditions, constituted a waiver of any double jeopardy claim.

(7) Hughes' final claim is that the denial of credit for the time he spent at boot camp constitutes a violation of equal protection. Essentially, Hughes argues that it is not fair for some defendants to be given credit for

⁹Hughes also argues that, because DEL. CODE ANN. tit. 11, § 6712(h) is not cited in the sentencing order, he is not subject to its provisions. That argument is meritless. Hughes was sentenced pursuant to DEL. CODE ANN. tit. 11, § 6712 and subsection (h), which sets forth the penalties in case of a violation of probation, clearly applies to him.

¹⁰*Seward v. State*, 723 A.2d 365, 375 (Del. 1999).

time spent at boot camp,¹¹ while others are not.¹² The equal protection clause does not prohibit the classification of individuals; but, rather, prohibits the arbitrary classification of persons to whom a statute is directed.¹³ In order to prevail on his claim, Hughes must demonstrate that there is no rational justification for the classification created by the statute. Because Hughes has not even attempted to make any such argument,¹⁴ his claim of a violation of equal protection must fail.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹¹DEL. CODE ANN. tit. 11, §§ 6710(c) (applying to offenders who, among other things, have not been convicted of violent crimes such as trafficking in drugs, as defined in § 6703.)

¹²DEL. CODE ANN. tit. 11, § 6712(h) (applying to first offenders who may have been convicted of violent crimes such as trafficking in drugs, as described in § 6712(b)(2).)

¹³*Helman v. State*, 784 A.2d 1058, 1074-75 (2001).

¹⁴Hughes argument consists solely of the following: “. . . by allowing credit for time served in the Boot Camp Diversion Program under 11 Del. C. § 6710 and subsequently denying the same credit for time served if the offender was convicted as set forth in 4751, 4752, 4753(A) or 4763 of title 16 or 4205 of this title under Boot Camp 11Del. C. § 6712 (sic) shows a direct violation of due process under equal protection of the law, therefore, making the law illegal and unconstitutional.”