

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GEORGE JACKSON,	§
	§ No. 373, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 91S03837DI
Plaintiff Below-	§
Appellee.	§

Submitted: August 30, 2011

Decided: October 21, 2011

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

ORDER

This 21st day of October 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, George Jackson, filed this appeal from the Superior Court's denial of his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The State has moved to affirm the judgment below on the ground that it is manifest on the face of Jackson's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Jackson in April 1992 of first degree robbery, attempted first degree murder, and

second degree conspiracy. The convictions stemmed from Jackson's robbery of a jewelry store during which he strangled a store clerk until she was unconscious, repeating the word "die" as he choked her.¹ The Superior Court sentenced Jackson to a total period of thirty-five years at Level V incarceration, to be followed by decreasing levels of supervision. This Court affirmed his convictions and sentences on direct appeal.² Thereafter, Jackson filed several unsuccessful petitions seeking postconviction relief.³

(3) In July 2011, Jackson filed a motion for correction of sentence asserting two claims: (i) his sentences for attempted murder and robbery violate the prohibition against double jeopardy; and (ii) his twenty-five year sentence for attempted murder constitutes cruel and unusual punishment because it exceeds the maximum sentence recently adopted by the legislature for the crime of strangulation. The Superior Court denied Jackson's motion. This appeal ensued.

(4) In his opening brief on appeal, Jackson again contends that his separate sentences for robbery and attempted murder violate double jeopardy principles because the offenses, in fact, were part of a single, continuous act for which separate punishments could not be imposed. Jackson also argues

¹ See *Jackson v. State*, 1993 WL 258704 (Del Super. June 15, 1993) (decision on remand).

² *Jackson v. State*, 1994 WL 397558 (Del. July 28, 1994).

³ See, e.g., *Jackson v. State*, 2005 WL 278187 (Del. Jan. 31, 2005).

that his twenty-five year sentence for attempted murder is excessive in light of the General Assembly's recent enactment of 11 Del. C. § 607.⁴

(5) It is well-settled that the narrow function of Rule 35(a) is to permit the correction of an illegal sentence, *not* to reexamine errors occurring at trial or prior to the imposition of sentence.⁵ Relief under Rule 35(a) is available only if the sentence imposed exceeds the statutorily authorized limits, violates the Double Jeopardy Clause, 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 Jackson's second argument on appeal, that his sentence for attempted murder is excessive in light of the recent statute defining "strangulation" as a Class E or Class D felony, is outside the scope of relief provided by Rule 35(a). The twenty-five sentence imposed by the Superior Court upon Jackson's conviction for attempted first degree murder was within the statutory range of sentences authorized by law for attempted

⁴ DEL. CODE ANN. tit. 11, § 607 (effective May 24, 2010) provides that a person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person. The crime of strangulation is either a Class E (maximum sentence of five years) or Class D (maximum sentence of eight years) felony depending upon the circumstances.

⁵ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁶ *Id.*

first degree murder. The latter-enacted statute codifying the crime of “strangulation” has no bearing on Jackson’s conviction or sentence. Accordingly, we reject this claim on appeal.

(6) Jackson’s remaining claim is that his separate convictions and sentences for robbery and attempted first degree murder violate double jeopardy principles because the crimes were part of a single, continuous act. The test for whether two convictions related to the same acts violate double jeopardy is “whether each [statutory] provision requires proof of a fact which the other does not.”⁷ First degree robbery requires that the defendant commit an act of theft and cause physical injury to a victim while intending to overcome the victim’s resistance to the theft.⁸ Attempted first degree murder requires proof that the defendant intended to kill the victim and took a substantial step toward that end.⁹ Each crime requires proof of an element that the other did not. Accordingly, there is no double jeopardy violation. Moreover, the Superior Court previously rejected Jackson’s claim that his convictions for robbery and attempted murder should merge for the purposes of sentencing.¹⁰ That ruling is the law of the case.

⁷ *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

⁸ DEL. CODE ANN. tit. 11, § 832(a)(1) (1991).

⁹ DEL. CODE ANN. tit. 11, §§ 531(2), 636(a)(1) (1991).

¹⁰ *In re Jackson*, 1996 WL 663096 (Del. Super. Sept. 10, 1996), *aff’d*, 1997 WL 317395 (Del. Apr. 16, 1997).

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/ Myron T. Steele
Chief Justice