

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE WILLIAMS,	§	
	§	No. 43, 2012
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	ID No. 9901005150
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: June 15, 2012

Decided: July 16, 2012

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

ORDER

This 16th day of July 2012, it appears to the Court that:

(1) Defendant-Below/Appellant, Maurice Williams, appeals from his Superior Court conviction and sentence for Violation of Probation. Williams contends that the Superior Court abused its discretion when it found him in Violation of Probation following his escape from Level IV custody, because he would not have been in custody but for an illegal sentence. We find no merit to Williams' appeal and affirm.

(2) On April 14, 1999, Williams pled guilty to one charge of Burglary Second Degree and one charge of Robbery Second Degree. He was sentenced on June 11, 1999. For the charge of Burglary Second Degree, he was placed in the

custody of the DOC at supervision Level V for a period of eight years. This eight-year term of incarceration was designated as mandatory pursuant to 11 *Del. C.* § 4204(k), and effective as of January 15, 1999. For the charge of Robbery Second Degree, he was sentenced to five years at Level V, suspended after four years for one year at Level IV. The four-year term of incarceration was designated as mandatory pursuant to 11 *Del. C.* § 4204(k). The sentences were to be served consecutively. Only the sentence for Robbery Second Degree is in dispute.

(3) On January 28, 2010, the Superior Court issued a modified sentence order for Williams' conviction for Robbery Second Degree. The Superior Court removed the mandatory designation for the first four years, and ordered that the remaining part of the original five-year sentence be served at Level IV. The § 4204(k) designation was removed because the statute could not apply to Williams' sentence, which was not equal to the statutory maximum or less than one year.¹ On January 19, 2011, the modified sentence order was corrected to designate the effective date as January 15, 1999.

(4) On November 4, 2010, Williams left the Level IV correctional center on a pass and did not return. He was charged with and found guilty of Escape after Conviction. The State moved to declare Williams a habitual offender. On

¹ Section 4204(k) "shall be applicable only to sentences of imprisonment at Level V for 1 year or less, or to sentences of imprisonment at Level V which are equal to the statutory maximum Level V sentence available for the crime or offense." 11 *Del. C.* § 4204(k)(3).

September 27, 2011, Williams moved for a sentence correction. He argued that his modified sentence order was illegal because it increased his time at Level IV. If the Court had eliminated the § 4204(k) provision without increasing the Level IV time, Williams argued, he would have been released from Level IV prior to his escape. The State responded that if the corrected sentence had been imposed at the outset, Williams would have been released, at the earliest, seventeen days after his escape. The Superior Court denied Williams' motion for sentence correction for the reasons stated in the State's response.

(5) On January 13, 2012, the Superior Court declared Williams a habitual offender for the Escape after Conviction charge and sentenced him to eight years at Level V. That same day, he was sentenced to two years at Level V for violating his Level IV probation for the Robbery Second Degree charge.

(6) This appeal followed, challenging the Violation of Probation conviction on grounds that his underlying sentence to Level IV was improper. The Superior Court denied Williams' motion for reargument, filed after this appeal was taken, as untimely. Williams has two other appeals pending in this Court. William has appealed from his conviction for Escape after Conviction,² and has

² See *Williams v. State*, No. 35, 2012.

appealed from the Superior Court's orders modifying his 1999 sentence and denying his motion for correction of sentence.³

(7) Williams' appeal is premised on his claim that the modified sentence order imposed an illegal sentence. He has not challenged the Violation of Probation conviction on any basis other than the allegedly illegal sentence. We review claims of legal error *de novo*.⁴

(8) Superior Court Criminal Rule 35(a) provides: "The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence." The purpose of Rule 35(a) is to allow for a correction of a sentence that exceeds the statutorily-authorized limits or violates Double Jeopardy.⁵ A sentence is also illegal where 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 The narrow function of Rule 35(a) is to permit correction of an illegal sentence, and not to consider other alleged errors occurring prior to the imposing of the sentence.⁷

³ See *Williams v. State*, No. 55, 2012.

⁴ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008).

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

⁶ *Id.* (citing *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir. 1997)).

⁷ *Brittingham*, 705 A.2d at 578.

(9) Williams contends that the Superior Court’s modified sentence order was illegal because it “increased Defendant’s Level IV sentence from one year to the suspended portion of a five-year Level V sentence (effectively more than one year).” Williams contends that the Superior Court instead should have “granted the modification by eliminating the § 4204k designation to the original sentence for Robbery Second Degree, and by vacating the modifications of January 28, 2010 and January 19, 2011. Both corrections should have been made retroactive to January 15, 1999, the effective date of the original sentence.” Under the recalculated release date, Williams argues, he would have been released from Level IV custody prior to the date of his escape.

(10) Williams’ argument lacks merit. The Superior Court did not err in resentencing Williams to Level IV for the time he was sentenced to spend at Level V. Further, Williams has not shown that the Superior Court erred in relying on the calculations set forth by the State, which show that Williams would not have been released prior to his escape date if he had received the corrected sentence at the outset.

(11) Even if Williams could show that he would have been released prior to his escape date, an illegal sentence does not provide justification for an Escape after Conviction charge. This Court has held that, “regardless of the irregularity of the confinement, the prisoner has no right to break jail because the writ of *habeas*

corpus is always available to determine the lawfulness of his incarceration, and having failed to adopt the recognized legal means of securing his release, he cannot defend his escape by pleading the invalidity of his commitment.”⁸ This result is consistent with the holdings of many other jurisdictions, which have rejected the alleged illegality of the underlying conviction or sentence as a defense to Escape.⁹ As the Court of Appeals of Maryland recently recognized, “[a] prisoner with an invalid sentence may not engage in self-help, and defy a court order of imprisonment, any more than a prisoner with a potentially invalid conviction.”¹⁰

(12) Moreover, the language of the statute proscribes escape “from a detention facility or other place having custody of such person” without mention of the propriety of the detention or custody.¹¹ Thus, Williams cannot defend an

⁸ *State v. Palmer*, 72 A.2d 442, 445 (Del. Super. 1950).

⁹ See *Hill v. State*, 20 A.3d 780, 784–85 (Md. 2011) (rejecting alleged illegality of underlying conviction or sentence as defense to escape) (citing *United States v. Haley*, 417 F.2d 625, 626 (4th Cir. 1969) (“A prisoner’s complaints concerning the legality of his conviction or of his imprisonment should be addressed to proper administrative body or to the courts. Self help in the form of escape or assault on a prison guard is indefensible.”); *United States v. Smith*, 534 F.2d 74, 75 (5th Cir. 1976) (“[V]alidity of conviction under which an escapee is confined is not an element of the offense of unlawful[] escap[e.]”); *Petition of Lynch*, 379 Mass. 757, 400 N.E.2d 854, 857 n. 2 (1980) (When “imprisonment is under color of law, the prisoner is not entitled to resort to self-help, but must apply for his release through regular legal channels[.]”); *Brown v. State*, 552 So.2d 109, 110 (Miss. 1989) (“[W]here one is imprisoned under some color of law, he is not entitled to resort to self-help but must apply for release through regular legal channels.”) (citation omitted)); see also *United States v. Cluck*, 542 F.2d 728, 732 (8th Cir.) (“If an individual is in custody under process issued pursuant to the laws of the United States, he cannot test the underlying validity or propriety of his confinement by escaping from it.”), *cert. denied*, 429 U.S. 986, 97 S.Ct. 506, 50 L.Ed.2d 597 (1976). But see *Endris v. State*, 233 P.3d 578 (Wyo. 2010) (reversing revocation of defendant’s probation and defendant’s conviction for escape on basis that underlying sentence was not authorized by statute).

¹⁰ *Hill*, 20 A.3d at 785.

¹¹ 11 *Del. C.* § 1253.

Escape after Conviction charge, and the related finding of a Violation of Probation, merely on grounds that he should not have been on probation in the first place.

(13) Finally, the Superior Court properly denied Williams' motion for reargument. Williams conceded that the motion was untimely, and the Superior Court did not err in determining that an interest of justice exception did not apply on these facts.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice