

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM T. JOHNSON, JR.,	§
	§
Defendant Below-	§ No. 122, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ ID No. 9711014716
Plaintiff Below-	§
Appellee.	§

Submitted: June 29, 2000
Decided: August 11, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices

ORDER

This 11th day of August 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, William T. Johnson, Jr., filed this appeal from an order of the Superior Court denying his motion to vacate sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In his opening brief Johnson claims that: first, the Superior Court abused its discretion by denying his Rule 35 motion without conducting an evidentiary hearing, by failing to address the issues raised in the motion and by failing to forward to him a copy of the order denying the motion, thereby

preventing him from filing a timely motion for reargument; second, the police violated his Fourth Amendment rights in gathering the evidence used to convict him; and, third, his acquittal on one of the robbery charges precluded his conviction on other related charges. In his reply brief Johnson also claims that he was sentenced illegally because the criminal action numbers on his indictment do not match the charges on which he was convicted and the Prothonotary's office illegally changed the criminal action numbers on his indictment rather than reporting the discrepancy to the Superior Court judge.¹

(3) In October 1998, Johnson was convicted by a Superior Court jury of robbery in the first degree, conspiracy and possession of a deadly weapon during the commission of a felony. He was sentenced to 20 years in prison at Level V for the robbery conviction, 3 years in prison at Level V for the possession of a deadly weapon conviction and 1 year in prison at Level V for the conspiracy conviction, to be suspended for 1 year at Level III. This Court affirmed Johnson's convictions and sentences on direct appeal.²

¹On July 28, 2000, Johnson also filed a document entitled "Notice of Motion to Amend the Appellants Reply Brief Dated: 6-21-2000." The Court has considered this document for purposes of this Order.

²*Johnson v. State*, Del. Supr., No. 12, 1999, Holland, J., 1999 WL 1098173 (Nov. 2, 1999) (ORDER).

(4) “Rule 35(a) permits the Superior Court to correct an illegal sentence ‘at any time.’”³ “The ‘narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the 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-authorized 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) Johnson’s initial claim that the Superior Court abused its discretion in its handling of his Rule 35(a) motion is without merit. The decision to grant a hearing on a Rule 35(a) motion is one that is committed to the sound discretion of the Superior Court.⁷ It was not an abuse of discretion for the Superior Court to decide Johnson’s motion without a hearing because it was apparent on the face

³*Brittingham v. State*, Del. Supr., 705 A.2d 577, 578 (1998).

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

⁵*Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4th Cir. 1992)).

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

⁷*Lewis v. State*, Del. Supr., No. 523, 1996, Veasey, C.J., 1997 WL 123585 (Mar. 5, 1997)(ORDER) (citing *Shy v. State*, Del. Supr., 246 A.2d 926, 927 (1968)).

of the motion that Johnson was not entitled to relief under Rule 35(a). Moreover, the Superior Court's order denying the motion adequately reflected that Johnson had provided no basis for relief pursuant to Rule 35(a).⁸ Equally unavailing is Johnson's claim that he was prejudiced by the Superior Court's failure to send him a copy of the order because he was prevented from filing a timely motion for reargument. Because there was no basis for relief under Rule 35(a), Johnson was not prejudiced by his alleged inability to file a timely motion for reargument.

(6) Johnson is not entitled to relief under Rule 35(a) with respect to his four remaining claims because he does not contend that his sentences exceeded the statutory authorization, constituted double jeopardy or were ambiguous or contradictory. Moreover, his claims that his Fourth Amendment rights were violated and that his acquittal on one of the robbery charges precludes his conviction on other related charges require an examination of "errors occurring at . . . other proceedings prior to the imposition of the sentence,"⁹ thereby precluding relief under Rule 35(a).

⁸Cf. *Derrickson v. State*, Del. Supr., 399 A.2d 202, 203 (1979) (case remanded where order contained inadequate basis for the Superior Court's rulings).

⁹*Brittingham v. State*, 705 A.2d at 578 (quoting *Hill v. United States*, 368 U.S. at 430).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Joseph T. Walsh
Justice