

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM GREGORY	§	
SUMMERS,	§	
	§	No. 238, 2004
Defendant Below-	§	
Appellant,	§	Court Below---Superior Court
	§	of the State of Delaware,
v.	§	in and for Kent County
	§	Cr. A. Nos. IK97-10-0448; 0451;
STATE OF DELAWARE,	§	0454
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: July 14, 2004
Decided: September 20, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 20th day of September 2004, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, William Gregory Summers, filed an appeal from the Superior Court's May 17, 2004 order denying Summers' motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of

the Superior Court on the ground that it is manifest on the face of Summers' opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In January 1999, Summers was found guilty in a Superior Court bench trial of Robbery in the First Degree, Assault in the Third Degree and Misdemeanor Theft. In October 1999, Summers was sentenced as an habitual offender² to life imprisonment. On direct appeal, this Court affirmed Summers' first two convictions, but reversed his conviction for misdemeanor theft. On remand, the Superior Court ordered that conviction to be stricken. Summers then filed three postconviction motions, each of which was denied by the Superior Court. On appeal, this Court affirmed each of those decisions.

(3) In this appeal, Summers claims that his life sentence as an habitual offender is illegal because, at the sentencing hearing, the prosecutor incorrectly stated that Summers' December 3, 1993 sentence for Delivery of Cocaine occurred on December 3, 1999. Summers contends that the State intentionally misstated the date to hide the fact that he was only 16 years of age on December 3, 1993, and, therefore, was not subject to the jurisdiction of the Superior Court.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." The purpose of Rule 35(a) is to permit correction of an illegal

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, § 4214(b).

sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.³ A sentence is illegal when it exceeds the statutorily-authorized limits or violates double jeopardy.⁴ A sentence also is 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 its substance, or is not authorized by the judgment of conviction.⁵

(5) The transcript of the October 1999 sentencing hearing clearly reflects that the judge understood that Summers was 16 years old at the time he committed the felony of Delivery of Cocaine. Although the prosecutor erroneously stated that the year the offense was committed was 1999, the papers submitted to the judge in support of the State's habitual offender petition clearly reflect that the offense was committed in 1993. Moreover, the judge noted at the time he imposed sentence that, although 16 at the time of the offense, Summers was tried and convicted as an adult in the Superior Court. There was, thus, no error or abuse of discretion on the part of the judge in determining that Summers' sentence as an habitual offender was not illegal and, in fact, was mandatory once the State had presented the requisite proof of Summers' prior convictions.⁶

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

⁴ *Id.*

⁵ *Id.*

⁶ Del. Code Ann. tit. 11, § 4214(b).

(6) It is manifest on the face of Summers' opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice