

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY MILLS,	§	
	§	
Defendant Below-	§	No. 317, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. No. VN01-10-0614-01
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: October 29, 2004

Decided: January 7, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 7th day of January 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Larry Mills, filed an appeal from the Superior Court's June 30, 2004 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) On April 29, 2004, following a contested violation of probation ("VOP") hearing in the Superior Court at which Mills was represented by counsel, Mills was found to have committed a VOP with respect to three separate

probationary sentences.¹ He was sentenced to a total of 4½ years incarceration at Level V, to be suspended after 18 months for decreasing levels of probation. Mills did not appeal the finding of a VOP or his VOP sentences. Instead, he filed a motion for correction of an illegal sentence,² which was denied by the Superior Court.

(3) In this appeal, Mills claims that his due process rights were violated because the Superior Court failed to follow the proper procedures at his VOP hearing.³ Specifically, he alleges that no bail was set for the VOP charges, he did not receive proper notice of the charges, and he had insufficient time to prepare a defense.

(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 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

¹ The sentences were in Cr. ID Nos. 0108020826, 0301015266, and 0304008528. The finding of a VOP was based on Mills’ commission of a new criminal offense, failure to report to his probation officer, and failure to comply with the special conditions of his probation.

² Super. Ct. Crim. R. 35(a).

³ Super. Ct. Crim. R. 32.1.

⁴ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).

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) Mills does not contend that his VOP sentences exceed the statutory limits, constitute double jeopardy, or are ambiguous or contradictory. The only contentions in his Rule 35(a) motion involve the VOP proceeding itself. As such, no relief is available to Mills pursuant to Rule 35(a).⁷ Moreover, even if Mills had properly appealed his due process claims, this Court would not have been able to review them, since Mills failed to order a transcript of the VOP hearing.⁸

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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 Id. (quoting *Hill v. United States*, 368 U.S. at 430).

⁸ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987) (it is the appellant’s burden to provide this Court with those portions of the record necessary for an effective review of the issues raised on appeal).

