

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BILLY G. JOHNSON,	§	
	§	No. 259, 2001
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County in
	§	N96-07-0447.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9602013276

Submitted: April 12, 2002

Decided: May 20, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices.

ORDER

This 20th day of May 2002, upon consideration of the parties' briefs and supplemental briefs, the Superior Court record, and the appellant's "motion to compel evidence," it appears to the Court that:

(1) The defendant-appellant, Billy G. Johnson, filed this appeal from the Superior Court's denial of his motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a). The Superior Court denied the motion on the basis that there is no evidence to support Johnson's claim that neither he nor his attorney was present at the guilty plea proceeding and sentencing. We agree and affirm.

(2) In February 1996, Johnson escaped from the Sussex Work Release Center. Johnson had been serving a sentence on a violation of probation (VOP) imposed by the New Castle County Superior Court in January 1996 on an underlying 1994 guilty plea conviction for Felony Theft (“theft case”).¹

(3) In August 1996, Johnson was charged by Information in the Sussex County Superior Court with Escape after Conviction (“escape case”). In New Castle County Superior Court, Johnson was charged with VOP on the theft case. In September 1996, Johnson’s escape case was transferred from the Superior Court in Sussex County to the Superior Court judge in New Castle County to whom the VOP case was assigned.²

(3) In August 1996, the Superior Court in New Castle County revoked Johnson’s probation and sentenced him to 22 months at Level V, suspended after nine months for 13 months of probation. On April 16, 1997, the Superior Court in New Castle County accepted Johnson’s guilty plea to

¹ *State v. Johnson*, Del. Super., No. 3030779DI, Toliver, J. (Jan. 25, 1994).

² *State v. Johnson*, Del. Super., No. 9602013276, Lee, J. (Sept. 13, 1996).

Escape in the Second Degree and sentenced him to two years imprisonment suspended for time served to two years probation.³

(4) In his motion for correction of sentence in the Superior Court and here on appeal, Johnson claims that neither he nor his counsel attended the April 1997 guilty plea proceeding and sentencing on the escape case. Johnson contends that court documents contrary to his claim are falsified. In his “motion to compel evidence,” Johnson seeks to compel the production of the guilty plea documents relied upon by the State in its answering brief and supplemental answering brief.

(5) Johnson’s “motion to compel evidence” is denied as moot. The Superior Court record includes the original plea agreement and truth-in-sentencing guilty plea form. Copies of those documents are included in the appendix to the State’s answering brief, two copies of which were served upon Johnson.

(6) The Superior Court record belies Johnson’s claim that neither he nor his counsel was present at the April 1997 guilty plea proceeding and sentencing. The record includes the plea agreement and truth-in-sentencing

³ The record reflects a delay in the disposition of Johnson’s escape case. Apparently the case “fell through the cracks” for a number of months after it was transferred from the Sussex County Superior Court to the New Castle County Superior Court.

guilty plea form. Both documents are completed by hand, dated,⁴ and appear to be signed by Johnson and his counsel. Moreover, the transcript of the plea colloquy includes remarks made by Johnson's counsel to the Court, the Superior Court judge's greeting to Johnson, Johnson's responses to that greeting, and Johnson's further response to the Superior Court's inquiries.

(7) Moreover, Johnson's claim that the court documents are falsified is unavailing. The Superior Court's official court records are entitled to a presumption of regularity.⁵ Johnson's unsupported allegations of irregularity are insufficient to overcome that presumption.

(8) On appeal, Johnson claims that the Superior Court erred when it failed to "consolidate" and then dismiss the Sussex County escape case after the escape case was transferred to New Castle County. Johnson contends that the Superior Court judge in New Castle County had indicated his intention to dismiss the escape case when Johnson appeared at the August 1996 VOP hearing on the theft case. Johnson, however, did not raise this claim in the Superior Court, and we decline to address the claim for the first

⁴ The truth-in-sentencing guilty plea form bears an incorrect hand-written date of April 17, 1997; however, the Prothonotary's time/date stamp on the document reflects the correct date of April 16, 1997.

⁵ See *Thompson v. Estelle*, 642 F.2d 996, 998 (5th Cir. 1981) (concluding that "[t]he district court could properly rely upon the regularity of the state court's documents in preference to [the habeas corpus petitioner's] own self-serving testimony . . .").

time on appeal.⁶ Moreover, “[t]he ‘narrow function of a Rule 35 motion 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.’”⁷ No relief is available to Johnson under Rule 35(a) with respect to this claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. Johnson’s “motion to compel evidence” is denied as moot.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶Supr. Ct. R. 8.

⁷*Brittingham v. State*, 705 A.2d 577, 578 (1998) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).