

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY FLOYD,	§	
	§	
Defendant Below-	§	No. 506, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. A. Nos. S88-01-0142; 0143;
	§	0145
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 10, 2005
Decided: February 10, 2005

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

ORDER

This 10th day of February 2005, 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, Larry Floyd, filed an appeal from the Superior Court's October 20, 2004 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's

judgment on the ground that it is manifest on the face of Floyd's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In January 1989, Floyd was found guilty by a Superior Court jury of Unlawful Sexual Intercourse in the First Degree, Burglary in the Second Degree and Criminal Mischief. He was sentenced to life imprisonment on the unlawful sexual intercourse conviction, to 7 years Level V incarceration on the burglary conviction and to an additional 6 months Level V incarceration on the criminal mischief conviction. This Court affirmed Floyd's convictions and sentences on direct appeal.² Following the denial of his direct appeal, Floyd filed five separate postconviction motions, all of which were unsuccessful.

(3) In this appeal, Floyd claims that: a) there was no valid waiver of either the indictment or the preliminary hearing; b) the Superior Court improperly failed to address his claim of a lack of jurisdiction; and c) he was denied his right to self-representation in connection with a postconviction evidentiary hearing.

(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 sentence, not to re-examine alleged errors occurring at the trial or other

¹ Supr. Ct. R. 25(a).

² *Floyd v. State*, Del. Supr., No. 104, 1989, Holland, J. (Nov. 6, 1989).

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) None of the claims made by Floyd has any bearing on the alleged illegality of his sentences. As such, Floyd is not entitled to any relief pursuant to Rule 35(a).

(6) It is manifest on the face of Floyd's 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.

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

⁴ *Id.*

⁵ *Id.*

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/ Randy J. Holland
Justice

Floyd v. State, No. 506, 2004
FLOYD:

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