

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM D. BARNETT,	§
	§
Defendant Below-	§ No. 530, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN95-05-1107
Plaintiff Below-	§ IN95-05-1108
Appellee.	§ N97-04-0859

Submitted: January 24, 2000

Decided: March 24, 2000

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

ORDER

This 24th day of March 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

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

(2) In this appeal, Barnett claims the Superior Court abused its discretion in denying his motion to correct an illegal sentence. He contends that his transfer to a prison in Virginia prevented him from participating in the

Key Program in violation of his constitutional rights. He also contends that the Superior Court should have informed him expressly at the time of sentencing that his plea agreement would prevent him from filing any motions pursuant to Rule 35(a). Barnett requests that he be returned to Delaware and placed in the Key Program on a priority basis or, alternatively, that the Superior Court modify its sentencing order, thus permitting him to participate in drug treatment while incarcerated in Virginia.

(3) In April 1997, Barnett pleaded guilty¹ to arson in the second degree and two counts of reckless endangering in the first degree. He was sentenced to a total of 13 years imprisonment at Level V,² with 1 additional year at Level IV, 2 additional years at Level III and another 2 years at Level II.³ Barnett did not file a direct appeal of his convictions or sentences. This is Barnett's third postconviction motion pursuant to Rule 35(a).

¹Pursuant to a plea agreement with the State. Super. Ct. Crim. R. 11(e) (1) (C).

²With respect to Barnett's Level V sentence, the plea agreement provided that he would not "be furloughed or be allowed to participate in work release or supervised custody outside the prison institution or facilities." 11 Del. C. § 4204(k) (amended July 9, 1997).

³The plea agreement also provided that Barnett was prohibited from filing any motions for sentence reduction or modification.

(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 the 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 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) Barnett does not contend that his sentence exceeded the statutory authorization, constituted double jeopardy, or was ambiguous or contradictory. His fundamental complaint is that he was transferred to a

⁴*Brittingham v. State*, Del. Supr., 705 A.2d 577, 578 (1998) (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)).

prison in Virginia and is unable to participate in drug treatment there. As such, no relief is available to Barnett pursuant to Rule 35(a).⁷

(6) To the extent Barnett is claiming that his guilty plea was involuntary, that claim is also unavailing. A review of the written plea agreement and the plea colloquy reflects that Barnett was informed, and understood, that as conditions of his sentence he was prohibited from participating in work release or supervised custody for the first 13 years of his sentence, and was prohibited from filing any motions for reduction or modification of sentence. In the absence of clear and convincing evidence to the contrary, Barnett is bound by the representations he made on his guilty plea form and during his plea colloquy.⁸

(7) To the extent Barnett is claiming that his plea agreement has been violated, that claim is without merit. The Department of Corrections may move a Delaware inmate to a correctional facility in another state at any time.⁹ Moreover, the plea agreement did not require Barnett's immediate placement

⁷*Id.* (citing *Hill v. United States*, 368 U.S. at 430).

⁸*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

⁹*Bagwell v. Prince*, Del. Supr., No. 141, 1996, Hartnett, J., 1996 WL 470723 (Aug. 9, 1996) (ORDER).

in a drug treatment program. It only provided that Barnett undergo evaluation and treatment sometime during his Level V sentence. Barnett has approximately 10 more years of his 13-year Level V sentence remaining.

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

BY THE COURT:

Chief Justice