

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTURO LABOY,	§	
	§	
Defendant Below-	§	No. 481, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 93003649DI
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: February 18, 2005
Decided: April 11, 2005

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

ORDER

This 11th day of April 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Arturo Laboy, filed an appeal from the Superior Court's October 12, 2004 order 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 February 1994, Laboy was found guilty by a Superior Court jury of Assault in the First Degree, Assault in the Second Degree, Stalking, Terroristic Threatening and two counts of Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 44 years incarceration at

Level V, to be suspended after 41½ years for probation. Laboy's convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In August 1994, Laboy filed a motion for reduction of sentence, which was denied. In February 2001, Laboy again filed a motion for reduction of sentence, which was heard by the original trial judge. The judge granted the motion in part, reducing Laboy's sentence on one of his weapons convictions from 20 years to 5 years at Level V. However, three days later, on March 2, 2001, another Superior Court judge, to whom the case had been assigned due to the retirement of the original trial judge, denied the motion as untimely.

(4) The State subsequently moved to vacate the Superior Court's February 2001 order reducing Laboy's sentence. On March 21, 2001, the Superior Court granted the motion to vacate and specifically reaffirmed its March 2, 2001 order. Laboy did not appeal the Superior Court's March 21, 2001 order.

(5) In 2002, Laboy filed a petition for a writ of habeas corpus challenging the March 21, 2001 order, which the Superior Court summarily dismissed. In 2003, Laboy filed a motion for postconviction relief again challenging the March 21, 2001 order. The Superior Court denied the motion and this Court dismissed Laboy's appeal.²

¹ *Laboy v. State*, Del. Supr., No. 210, 1994, Veasey, C.J. (June 23, 1995).

² *Laboy v. State*, Del. Supr., No. 382, 2003, Steele, J. (Oct. 27, 2003).

(6) We find no error or abuse of discretion in the decision of the Superior Court to deny Laboy's latest motion for sentence reduction. The record reflects that this claim was fully litigated in the proceedings on Laboy's postconviction motion. The disposition of that motion became the law of the case.³ Laboy may not now invoke Rule 35(a) in an attempt to re-litigate his claim.⁴

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³ *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

⁴ *Id.*