

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY D. SAVAGE,	§
	§
Defendant Below-	§ No. 509, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN01-03-0098
Plaintiff Below-	§ IN01-03-1603
Appellee.	§

Submitted: October 21, 2002

Decided: December 9, 2002

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

ORDER

This 9th day of December 2002, 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, Anthony D. Savage, filed an appeal from the Superior Court's August 5, 2002 order denying his motion to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the

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

(2) In March 2001, Savage pleaded guilty to Possession of Marijuana and Possession with Intent to Deliver Marijuana. He was sentenced to a total of 5 years and 6 months incarceration at Level V, to be suspended after 30 months for decreasing levels of probation.

(3) In his appeal, Savage claims that his sentence is illegal because: a) the sentencing form incorrectly noted that he had prior felony convictions, leading the Superior Court to sentence him improperly to a longer prison term;² and b) his counsel provided ineffective assistance.

¹SUPR. CT. R. 25(a).

²Savage claims that he should have been sentenced to 15 months in prison rather than 30, in accordance with the Truth in Sentencing ("TIS") guidelines.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” The narrow function of the Rule 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.³ Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-imposed limits, or violates the Double Jeopardy Clause.⁴ 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.⁵

(5) There is no factual basis for Savage’s claim that the Superior Court’s sentence was based upon incorrect information concerning his criminal history. While the sentencing form reflects that the prosecutor began to fill out the section for “prior felonies,” she crossed out what she had written and instead filled out the section for “prior misdemeanors,” listing a 1995 conviction for

³*Tatem v. State*, 787 A.2d 80, 81 (Del. 2001).

⁴*Id.*

⁵*Id.*

third degree conspiracy, a 1995 conviction for shoplifting and a 1996 conviction for third degree unlawful sexual contact. Savage does not claim that the information concerning his misdemeanors is incorrect.

(6) There is also no legal basis for Savage's claim that his sentence is improper. Because the sentence imposed by the Superior Court was within the statutory limitation,⁶ Savage is entitled to relief under Rule 35(a) only if "it is clear from the record below that [his] sentence [was] imposed on the basis of demonstrably false information or information lacking a minimal indicium of reliability."⁷ There is no such evidence in this case.⁸

(6) Savage's claim of ineffective assistance of counsel also is unavailing. Because such a claim requires an examination of the proceedings leading up to the imposition of sentence, no relief is available to Savage under Rule 35 (a).⁹

⁶DEL. CODE ANN. tit. 16, §§ 4752, 4754 and tit. 11, § 4206.

⁷*Mayes v. State*, 604 A.2d 839, 843 (Del. 1992).

⁸Moreover, to the extent that Savage suggests that his sentence should be vacated because it does not follow the TIS guidelines, that claim is also without merit since there is no right to appeal a statutorily-authorized sentence solely on that basis. *Mayes v. State*, 604 A.2d at 845.

⁹*Tatem v. State*, 787 A.2d 80, 82 (Del. 2001).

(7) It is manifest on the face of Savage'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.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice