

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN F. WHITEMAN,	§
	§
Defendant Below-	§ No. 292, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID Nos. 30604628DI and
Plaintiff Below-	§ 30901716DI
Appellee.	§

Submitted: July 20, 2005

Decided: September 7, 2005

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

ORDER

This 7th day of September 2005, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Benjamin Whiteman, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Whiteman's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Whiteman pled guilty in 1987 to one count of second degree burglary. The 1987 plea agreement provided that the State would not recommend a life sentence, but the defendant would admit

that his three prior felony convictions qualified him as an habitual offender under 11 Del. C. § 4214(a). The Superior Court accepted the plea agreement, declared Whiteman to be an habitual offender, and sentenced him to ten years at Level V incarceration, to be suspended after serving three years for decreasing levels of supervision. In 1989, a Superior Court jury convicted Whiteman of third degree unlawful sexual penetration. The Superior Court granted the State's motion to declare Whiteman an habitual offender and sentenced him to life imprisonment in accordance with 11 Del. C. § 4214(a).

(3) In May 2005, Whiteman filed his latest motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a).¹ Whiteman argued that his 1987 guilty plea was invalid because the plea agreement referred to a resisting arrest charge that had been dismissed in November 1986. The Superior Court summarily denied Whiteman's motion on procedural and substantive grounds.

(4) It is well-settled Delaware law that a motion to correct an illegal sentence under Superior Court Criminal Rule 35(a) is not a procedural vehicle to challenge "errors occurring at the trial or other

¹ Superior Court Criminal Rule 35(a) provides, "The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence."

proceeding prior to the imposition of sentence.”² Whiteman’s attempt to use Rule 35(a) as a means to challenge the legality of his 1987 guilty plea, therefore, was improper. Accordingly, Whiteman was not entitled to relief.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

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