

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYREASE J. HOWARD,	§
	§
Defendant Below-	§ No. 328, 2005
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. 0108016785
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 9, 2005  
Decided: October 31, 2005

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

**ORDER**

This 31<sup>st</sup> day of October 2005, upon consideration of the opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Tyrease Howard, appeals from the Superior Court’s denial of his sixth motion for correction of sentence. The State of Delaware has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Howard’s opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Howard pled guilty in December 2001 to one count of trafficking cocaine in violation of 16 *Del. C.* § 4753A(a)(2)a, which carried a three-year minimum mandatory term of imprisonment.

Under 11 *Del. C.* § 6712, the Superior Court deferred sentencing and diverted Howard to the boot camp program. Howard was required, however, to successfully complete a six-month program at a boot camp facility to be followed by two and a half years of aftercare supervision at Level IV or III. After successfully completing the boot camp portion of the program in September 2002, Howard then began the Level IV aftercare. In March 2003, he was charged with violating the conditions of his Level IV placement. In April 2003, the Superior Court found him in violation and sentenced him to two years imprisonment, suspended immediately for two years of probation.

(3) In June 2003, Howard was charged with a second violation. In July 2003, after a hearing, the Superior Court found Howard in violation and sentenced him to four and a half years imprisonment, to be suspended after serving three years of probation. Howard did not appeal from this sentence. Instead, he filed a motion to modify his sentence, a motion that the Superior Court denied. Thereafter, Howard filed five additional motions to modify his sentence, all of which were denied.

(4) In February 2005, the Superior Court held that the sentence imposed in April 2003 was illegal because it failed to comply with the requirements of the boot camp statute, but that the July 2003 order corrected

the illegal sentence imposed in April 2003. In June 2005, the Superior Court denied Howard's sixth motion to modify his sentence as repetitive. Howard appeals that decision.

(5) After careful consideration, we find that the Superior Court's judgment must be affirmed on two grounds. First, Superior Court Criminal Rule 35(b) provides that the Superior Court will not consider repetitive motions for reduction or modification of sentence. Because Howard had filed five previous motions to modify his sentence, the Superior Court did not abuse its discretion in denying Howard's most recent motion.

(6) Second, contrary to Howard's assertion, the July 2003 sentencing order was not illegal. Rather, the July 2003 sentencing order corrected the illegal sentencing order entered in April 2003. The boot camp statute provides that upon a finding of a violation, the Superior Court must "impose not less than the full applicable Level V sentence mandated for the offense(s) of which the offender was convicted."<sup>1</sup> Thus, upon finding Howard in violation of the conditions of his boot camp aftercare in April 2003, the Superior Court was statutorily required to impose the full three-year minimum mandatory sentence that had previously been deferred.<sup>2</sup> All

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<sup>1</sup> 11 Del. C. § 6712(h).

<sup>2</sup> *Whitner v. State*, 762 A.2d 18, 19 (Del. 2000).

that the Superior Court's July 2003 order did was impose the sentence required by Delaware law.<sup>3</sup>

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>3</sup> *Id.*