

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BOBBY K. PRICE, JR.,	§
	§
Defendant Below-	§ No. 555, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN94-04-0237
Plaintiff Below-	§
Appellee.	§

Submitted: March 1, 2002

Decided: April 10, 2002

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

ORDER

This 10th day of April 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Bobby K. Price, Jr., filed an appeal from the Superior Court's October 22, 2001 order denying his motion to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a).

We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In May 1995, after rejecting the State's plea offer and proceeding to a jury trial, Price was convicted of Felony Theft. He was also acquitted of Third Degree Burglary and Criminal Mischief. In August 1995 Price was

sentenced as an habitual offender¹ to 35 years imprisonment. This Court affirmed Price's conviction and sentence on direct appeal.² This Court also affirmed the Superior Court's denial of Price's subsequent motion for postconviction relief pursuant to Superior Court Criminal Rule 61.³

(3) In his appeal, Price claims that the Superior Court punished him for rejecting the State's plea offer and exercising his right to a trial by jury by sentencing him as an habitual offender. The plea offer required Price to plead guilty to Burglary in the Third Degree and admit to his status as an habitual offender in return for the State's dismissal of the charges of Felony Theft and Criminal Mischief. Price refused the plea offer on the ground that he was innocent of the burglary charge. In essence, Price claims that the Superior Court should not have sentenced him as an habitual offender on the theft conviction when the jury had acquitted him of the burglary charge, thereby justifying his claim of innocence and his rejection of the State's plea offer.

¹DEL. CODE ANN. tit. 11, § 4214(a).

²*Price v. State*, Del. Supr., No. 367, 1995, Hartnett, J. (Aug. 19, 1996).

³*Price v. State*, Del. Supr., No. 105, 2000, Steele, J. (Jan. 18, 2001).

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.”⁴ “The ‘narrow function of Rule 35 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.’”⁵ “Relief under Rule 35(a) is available ‘when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy Clause’”⁶ “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.’”⁷

(5) Price does not assert that his sentence was outside the statutory authorization, constituted double jeopardy, or was ambiguous or contradictory. His sole claim is that his sentence as an habitual offender was punitive. Because that claim would require an examination of the proceedings

⁴*Tatem v. State*, 787 A.2d 80, 81 (Del. 2001).

⁵*Id.*

⁶*Id.*

⁷*Id.*

leading up to the imposition of sentence, no relief is available to Price under Rule 35(a).

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

BY THE COURT:

s/Joseph T. Walsh
Justice