

THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL S. HENDERSON,	§
	§
Defendant Below-	§ No. 188, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 9703007130
Plaintiff Below-	§
Appellee.	§

Submitted: June 11, 2002
Decided: July 24, 2002

Before **VEASEY**, Chief Justice, **BERGER**, and **STEELE**, Justices.

ORDER

This 24th day of July 2002, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) In August 1997, the defendant-appellant Michael Henderson pleaded guilty to three counts of robbery, weapon offenses, and numerous other charges, pursuant to a plea agreement reached in accordance with then-existing Superior Court Criminal Rule 11(e)(1)(C). The plea agreement provided, among other things, that the State would recommend the minimum mandatory term of fifteen years incarceration. The Superior Court accepted the plea agreement and, in September 1997, sentenced Henderson to thirty years at Level V imprisonment

suspended after serving fifteen years for sixteen and a half years of probation. Henderson did not appeal his sentence.

(2) Instead, in October 2001, Henderson filed a motion seeking to correct his sentence pursuant to Superior Court Criminal Rule 35(a). Henderson, for the first time, alleged that his sentence was illegal because it exceeded the agreed-to sentence in his plea agreement. The Superior Court summarily denied his motion on the ground that it was filed more than 90 days after sentencing and, thus, was time-barred. This appeal ensued.

(3) Henderson contends that his sentence is illegal and thus may be corrected “at any time”¹ under Rule 35(a), and thus the Superior Court erred by applying a 90 day limitations period. We disagree. We have held that Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time” generally only when the sentence imposed exceeds statutorily authorized limits or violates double jeopardy principles.² In Henderson’s case, there is no contention that the sentence exceeded authorized limits or violated double jeopardy principles. In fact, Henderson’s contention, that the Superior Court failed to abide by his agreed-

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.” Rule 35(b), regarding motions for reduction of sentence, provides that such a motion must be filed within 90 days of sentencing, absent extraordinary circumstances.

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

to sentence, is more in the nature of a motion for correction of a sentence imposed in an illegal manner.³ A motion for correction of a sentence imposed in an illegal manner must be filed with 90 days of sentencing, absent extraordinary circumstances. Accordingly, we find no error in the Superior Court's denial of Henderson's untimely motion.

(4) Upon consideration of the entire record, we find it manifest on the face of Henderson's opening brief that the judgment of the Superior Court should be affirmed. The Superior Court did not err or abuse its discretion by treating Henderson's motion as a motion to correct a sentence imposed in an illegal manner, which was required to be filed within 90 days after sentencing.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

³ See *Jones v. State*, Del. Supr., No. 524, 1999, Holland, J. (Apr. 14, 2000).