

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD J. KELLY,	§
	§ No. 354, 2006
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 82005725DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 29, 2006
Decided: October 27, 2006

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

ORDER

This 27th day of October 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Edward J. Kelly (a.k.a. Abdullah Karim), filed an appeal from the Superior Court’s June 12, 2006 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we affirm.

(2) In January 1983, Kelly was found guilty by a Superior Court jury of three counts of Robbery in the First Degree and one count each of Possession of a Deadly Weapon During the Commission of a Felony and

Possession of a Deadly Weapon By a Person Prohibited. He was sentenced as a habitual offender¹ to life imprisonment without the possibility of parole and to an additional thirty-five years of Level V incarceration. On direct appeal, this Court reduced one of the Robbery in the First Degree convictions to Attempted Robbery in the First Degree and affirmed the remaining convictions.²

(3) In this appeal, Kelly claims that the State violated his constitutional rights by applying Section 4214(b) of the habitual offender statute to him and not to others with similar criminal records and, furthermore, that the Superior Court should not have denied his Rule 35(a) motion on the ground that it should have been pursued as a postconviction motion under Rule 61. In support of his argument of a constitutional violation, Kelly states only that, “. . . after six convictions my co-defendant was never sentenced as a habitual criminal.”

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to

¹ Del. Code Ann. tit. 11, § 4214(b).

² *Kelly v. State*, Del. Supr., No. 23, 1984, Moore, J. (July 9, 1985). The matter was remanded to the Superior Court for re-sentencing solely on the first degree attempted robbery conviction.

be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.³

(5) Kelly has cited insufficient factual grounds to demonstrate that his sentence is illegal because the habitual offender statute has been applied in an unconstitutional manner by the Attorney General and the Delaware courts. Kelly concedes as much when he states in his reply brief that “[h]e would need subpoena power to review criminal records and files of the Attorney General, Public Defender’s Office and the [S]uperior [C]ourt, to prove the . . . constitutional violations.” Because Kelly has failed to demonstrate that his sentence is illegal and, therefore, that he is entitled to relief pursuant to Rule 35(a), we conclude that the Superior Court correctly denied his claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.⁴

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁴ *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (This Court may affirm a judgment of the Superior Court on grounds different from those relied upon by the Superior Court).