

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEAVNEY L. WATSON,	§
	§ No. 585, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0407002805
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 16, 2006
Decided: December 15, 2006

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

ORDER

This 15th day of December 2006, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Keavney L. Watson, filed an appeal from the Superior Court’s October 20, 2006 order denying his third motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In November 2005, Watson pleaded guilty to the charges of Unauthorized Use of a Motor Vehicle and Noncompliance with Conditions of Bond. On the first conviction, Watson was sentenced to 1 year of Level V incarceration, to be suspended for 1 year of Level III probation. On the second conviction, he was sentenced to 1 year of Level V incarceration, to be suspended for 1 year of concurrent Level III probation.

(3) Three months later, in February 2006, Watson was found to have committed a violation of probation (“VOP”) and was sentenced to 1 year of Level V incarceration on each of his convictions without any subsequent periods of probation. The Superior Court later corrected its VOP sentencing order to provide for a sentence of 205 days of Level V incarceration on the conviction of unauthorized use of a motor vehicle and a 6-month period of Level IV probation on the conviction of noncompliance with conditions of bond.

(4) In this appeal, Watson claims that the corrected VOP sentence on this latter conviction is illegal because the Superior Court did not originally sentence him to the additional 6-month probationary period.

(5) 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 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.¹

(6) Delaware law also provides that, whenever the Superior Court imposes a sentence of Level V incarceration for one or more offenses that totals 1 year or more, it must include as part of that sentence custodial supervision at Level IV, III or II for a period of not less than 6 months “to facilitate the transition of the individual back into society.”² As such, the Superior Court properly corrected its VOP sentencing order to provide for the statutorily mandated 6-month period of probation. Watson has, therefore, failed to demonstrate that he is entitled to relief pursuant to Rule 35(a).

(7) It is manifest on the face of Watson’s opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

¹ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

² Del. Code Ann. tit. 11, §4204(l).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:
/s/ Jack B. Jacobs
Justice