

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL BOWERS,	§
	§
Defendant Below-	§ No. 666, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 9804018057
Plaintiff Below-	§
Appellee.	§

Submitted: June 13, 2007

Decided: August 20, 2007

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

ORDER

This 20th day of August 2007, 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) The appellant, Michael Bowers, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Bowers' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in January 2000, Bowers entered a guilty plea, pursuant to *Robinson v. State*,¹ to five counts of third degree unlawful sexual intercourse and one count of continuous sexual abuse of a child for crimes involving his minor daughter. The Superior Court sentenced him to a total period of fifteen years at Level V incarceration to be followed by decreasing levels of probation. Bowers did not file an appeal to this Court. Instead, in May 2002, he filed for postconviction relief, which the Superior Court denied. In April 2006, he filed a motion for correction of sentence under Superior Court Criminal Rule 35(a), arguing that his convictions and sentences violated double jeopardy principles. The Superior Court treated Bowers' motion as a motion for modification of sentence under Superior Court Criminal Rule 35(b) and summarily denied it on the ground that it was not timely filed. This appeal followed.

(3) Although the Superior Court mistakenly treated Bowers' motion as a sentence modification motion under Rule 35(b),² we nonetheless conclude that the judgment below should be affirmed because there is no

¹ *Robinson v. State*, 291 A.2d 279 (Del. 1972).

² Bowers filed his motion as a motion for correction of illegal sentence under Rule 35(a). A motion under Rule 35(a) may be filed at any time and is not subject to the 90-day limitations period of Rule 35(b). While the function of Rule 35(a) is narrow, it may provide relief if a defendant can establish his sentence violates double jeopardy principles, which was the basis for Bowers' motion in the Superior Court. See *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

substantive merit to Bowers' arguments. In the first instance, Bowers' entry of a guilty plea³ operates as a waiver of any double jeopardy claim surrounding the indictment charging him with over fifty separate criminal offenses.⁴ Furthermore, it is clear that there is no substantive merit to Bowers' double jeopardy argument as it pertains to his sentencing. Bowers' multiple crimes against his daughter were distinct events occurring over the course of four years. Each incident was a separate crime and thus separately punishable.⁵ Accordingly, we find it manifest that the judgment of the Superior Court should be affirmed, albeit on the alternative the ground that Bowers' Rule 35(a) motion lacked merit.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ Bowers' contention that his guilty plea was defective because he was not present in court for the plea colloquy or sentencing was not raised to the Superior Court below and, more importantly, is factually unsupported by the record. We will not consider it further in this appeal. *See* Supr. Ct. R. 8.

⁴ *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

⁵ *Feddiman v. State*, 558 A.2d 278, 287-88 (Del. 1989).