

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORIS SMILEY,	§
	§
Defendant Below-	§ No. 248, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. VN91-01-2206
	§ Cr. ID 30100527DI
Plaintiff Below-	§
Appellee.	§

Submitted: August 22, 2002
Decided: September 16, 2002

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

ORDER

This 16th day of September 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) The defendant-appellant, Oris Smiley, pleaded guilty in 1991 to two counts of third degree unlawful sexual intercourse. The Superior Court sentenced him to a total period of fifteen years incarceration, suspended after five years for decreasing levels of supervision. Smiley was found in violation of the terms of his probation on several occasions. In February 2001, the Superior Court again found that Smiley had violated the terms of his probation by having contact with juveniles on two separate occasions.

The Superior Court sentenced Smiley to eight years and ten months at Level V incarceration, suspended after four years for the balance at Level III probation. Although Smiley appealed his VOP sentence, he later voluntarily dismissed the appeal.¹ In March 2002, Smiley filed a motion to correct his sentence under Superior Court Criminal Rule 35(a). Smiley contended that his VOP sentence was illegal because he had no knowledge of the special “no contact” condition. The Superior Court denied Smiley’s motion on the grounds that it was time-barred and without substantive merit. This appeal ensued.

(2) We have carefully considered the parties’ respective positions. We find it manifest on the face of Smiley’s opening brief that the judgment of the Superior Court should be affirmed for the reasons stated in the Superior Court’s well-reasoned decision dated April 12, 2002. The claims raised by Smiley went to the substance of his probation violation. The narrow function of Rule 35(a), however, is to permit correction of an illegal sentence, not to examine alleged errors occurring in the proceedings leading to the imposition of the sentence.² Moreover, Smiley’s voluntary dismissal of his appeal from the VOP proceedings made the Superior Court’s decision

¹ *Smiley v. State*, Del. Supr., No. 90, 2001 (voluntarily dismissed Apr. 27, 2001).

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

as to the VOP proceedings the law of the case.³ Smiley is barred from relitigating issues concerning the VOP proceedings.

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

BY THE COURT:

s/Joseph T. Walsh
Justice

³ *Id.* at 579.