

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM JOSEPH WEBB, JR.,	§
	§
Petitioner Below-	§ No. 288, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9702013762
Respondent Below-	§
Appellee.	§

Submitted: July 16, 2007

Decided: September 28, 2007

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

ORDER

This 28th day of September 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, William Joseph Webb, Jr., filed this appeal from the Superior Court's order denying his motion for correction of illegal sentence. Webb sought relief on the ground that his original 1997 sentence, and subsequent VOP sentence, were illegal and were the product of ineffective assistance of counsel. The State has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Webb's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Webb pleaded guilty to Burglary in the Second Degree and was sentenced in May 1997 to eight years at Level V imprisonment, to be suspended after serving one year for seven years of probation. Thereafter, in June 2000, the Superior Court found him in violation of the terms of his probationary sentence and reimposed a period of incarceration. In the matter on appeal, Webb filed a motion in March 2007 seeking correction of an illegal sentence under Superior Court Criminal Rule 35(a). The Superior Court denied the motion, and this appeal ensued.

(3) Although Webb enumerates four issues in his opening brief, the gist of his complaint is that the Superior Court erroneously sentenced him in 1997 to eight years in prison suspended after serving one year when, in fact, the guilty plea agreement, entered into pursuant to Superior Court Rule 11(e)(1)(C), provided for an agreed-to sentence of one year in prison “followed by probation.” Webb argues that because his original sentence was ambiguous and thus illegal, his subsequent VOP sentence also is illegal.

(4) After careful consideration, we find no merit to Webb’s appeal. Although Webb contends that his 1997 sentence is illegal because it is ambiguous, we find nothing ambiguous about the Superior Court’s imposition of an eight-year prison term, which was to be suspended after

Webb served one year. Moreover, the sentence was within the statutory range of authorized sentences for Burglary in the Second Degree.¹ Webb's real complaint is not that his sentence is illegal, but that the sentence was imposed in an illegal manner because it allegedly did not comply with the sentence he agreed to in his plea agreement. Webb previously raised this argument in an unsuccessful postconviction petition under Rule 61.² Webb cannot seek to relitigate this same issue simply by filing his motion as a motion for correction of illegal sentence under Rule 35(a).³

(5) Moreover, the function of a Rule 35(a) motion is very narrow.⁴ Rule 35(a) only reaches challenges to the sentence itself and may not be used to re-examine errors occurring in the proceedings prior to the imposition of sentence.⁵ A motion seeking the correction of a sentence imposed in an illegal manner is subject to the 90-day limitation period in Superior Court Criminal Rule 35(b).⁶ Accordingly, we find no error in the

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

² *Webb v. State*, 2006 WL 2559854 (Del. Super. Aug. 29, 2006), *aff'd*, 2006 WL 3613635 (Del. Dec. 12, 2006).

³ *Brittingham v. State*, 705 A.2d at 578.

⁴ *Id.*

⁵ *Id.*

⁶ See Del. Super. Ct. Crim. R. 35(a).

Superior Court's denial of Webb's motion for correction of sentence under Rule 35(a).

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

BY THE COURT:

/s/ Randy J. Holland
Justice