

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTIAN DEJESUS,	§	
	§	No. 410, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 0303004601
Appellee.	§	

Submitted: August 28, 2007

Decided: November 5, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 5<sup>th</sup> day of November 2007, 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) In May 2004, a Superior Court jury convicted the appellant, Christian DeJesus, of Burglary in the First Degree, Unlawful Imprisonment in the First Degree, four counts of Possession of a Firearm During the Commission of a Felony and three counts of Aggravated Menacing. The Superior Court sentenced DeJesus to a total of twelve years of incarceration

followed by probation. On direct appeal, this Court affirmed the Superior Court judgment.<sup>1</sup>

(2) In July 2005, DeJesus filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The Superior Court denied DeJesus's motion, and on appeal this Court affirmed.<sup>2</sup>

(3) In April 2007, DeJesus filed a motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a). DeJesus argued that his April 2003 indictment was defective, and that without a valid indictment the Superior Court was without jurisdiction to sentence him. In the July 12, 2007 order denying DeJesus's motion for correction of sentence, the Superior Court considered and denied the merit of DeJesus's defective indictment claim.

(4) The limited purpose of Superior Court Criminal Rule 35(a) is to permit correction at any time of an illegal sentence, “not to re-examine [alleged] errors occurring at the trial or other proceedings prior to the imposition of sentence.”<sup>3</sup> In this case, it is clear that DeJesus's claim of defective indictment concerned alleged errors that occurred prior to the

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<sup>1</sup> *DeJesus v. State*, 2005 WL 65865 (Del. Supr.).

<sup>2</sup> *State v. DeJesus*, 2005 WL 2360680 (Del. Super.), *aff'd*, 2006 WL 1506205 (Del. Supr.).

<sup>3</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).

imposition of sentence.<sup>4</sup> As a result, DeJesus is not entitled to relief under Superior Court Criminal Rule 35(a).<sup>5</sup>

(5) It is manifest on the face of DeJesus's opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED, that the appellee's motion to affirm is granted, and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>4</sup> *E.g.*, *Deputy v. State*, 2005 WL 3358527 (Del. Supr.).

<sup>5</sup> *Id.* See *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (providing that "[the] Court may affirm on the basis of a different rationale than that which was articulated by the trial court.").