

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS V. ALEXANDER,	§
	§
Defendant Below-	§ No. 237, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN92-06-0968
Plaintiff Below-	§
Appellee.	§

Submitted: August 15, 2003
Decided: September 29, 2003

Before **BERGER, STEELE** and **JACOBS**, Justices

ORDER

This 29th day of September 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Thomas V. Alexander, filed an appeal from the Superior Court's April 25, 2003 order denying his "motion for clerical mistakes" pursuant to Superior Court Criminal Rule 36. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In February 1994, Alexander pleaded guilty to Murder in the Second Degree. He was sentenced to 15 years incarceration at Level V, 10 years of which was a minimum mandatory term, to be followed by 5 years of Level II probation. In February 1999, Alexander filed a motion for modification of sentence pursuant

to Superior Court Criminal Rule 35 on the ground that he had been sentenced to 10 years, not 15, at Level V, with 5 years of probation. The Superior Court denied Alexander's Rule 35 motion and Alexander did not take an appeal.

(3) In the instant appeal from the Superior Court's denial of his Rule 36 motion, Alexander again claims that his sentence should be 10 years at Level V, with 5 years of probation. He now appears to base his claim on the Superior Court's failure to include the 5-year period of probation in its original sentencing order.

(4) Alexander's claim is essentially the same claim he previously asserted pursuant to Rule 35. He is, therefore, barred from re-litigating that claim in this proceeding.¹

(5) Even if Alexander's claim were not procedurally barred, it is without merit. That the Superior Court's original sentencing order did not include the probationary portion of his sentence is of no importance. That portion of Alexander's sentence is reflected on the sentencing worksheet and was enunciated by the Superior Court at the sentencing hearing. Moreover, the Superior Court corrected the oversight in an amended sentencing order filed on June 6, 1994. There is no question that Alexander's sentence is 15 years at Level V followed by

¹*Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

5 years of Level II probation. Therefore, the Superior Court correctly denied Alexander's "motion for clerical mistakes."

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

BY THE COURT:

/s/ Myron T. Steele
Justice