

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE L. BYLER,	§
	§ No. 627, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. No. 0606020187
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 13, 2007

Decided: January 15, 2008

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

ORDER

This 15th day of January 2008, 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) The defendant-appellant, Bruce L. Byler, filed an appeal from the Superior Court’s November 14, 2007 order correcting his sentence. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Supr. Ct. R. 25(a).

(2) In August 2006, Byler was indicted on charges of Rape in the First Degree and Burglary in the Second Degree. In June 2007, Byler pleaded guilty to the lesser-included offense of Rape in the Third Degree. The burglary charge was dismissed. Byler was sentenced to twenty-five years of Level V incarceration, to be suspended after ten years for a total of two years home confinement and probation.

(3) Byler subsequently filed a motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). He alleged that his twenty-five-year prison sentence exceeded the statutory maximum of twenty years that was in effect at the time the crime was committed.² The Superior Court granted Byler's motion by order dated September 5, 2007 and, on November 14, 2007, issued a corrected order sentencing him to twenty, rather than twenty-five, years at Level V, to be suspended after ten years for decreasing levels of supervision.

(4) In this appeal, Byler claims that the Superior Court abused its discretion by correcting his sentence without addressing his challenge to his guilty plea.

(5) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." Relief under Rule 35(a) is available when the

² The record reflects that Byler also challenged his guilty plea.

sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.³ A sentence also is illegal when it is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁴ Rule 35(a) is not a means to review alleged errors occurring prior to the imposition of sentence.⁵

(6) Because a challenge to a guilty plea involves alleged errors occurring prior to the imposition of sentence, a challenge to a guilty plea is not cognizable under Rule 35(a). As such, the Superior Court did not abuse its discretion when it did not address Byler's request to withdraw his guilty plea.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁴ *Id.*

⁵ *Id.*

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice