

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD H. LUM, JR.,	§
	§
Defendant Below-	§ No. 211, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S88-06-0135-
Plaintiff Below-	§ 0136
Appellee.	§

Submitted: November 28, 2001

Decided: January 15, 2002

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

ORDER

This 15th day of January 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Richard H. Lum, Jr., filed an appeal from the April 19, 2001 sentencing order of the Superior Court. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In this appeal, Lum claims that his sentence is illegal because:
a) it does not reflect the statutory language in effect at the time he was sentenced; b) it exceeds the maximum prison term authorized by law; and

c) the lack of a preliminary hearing and a formal indictment deprived the Superior Court of jurisdiction to sentence him.

(3) In January 1989, Lum was convicted by a Superior Court jury of Unlawful Sexual Intercourse in the First Degree and Burglary in the Second Degree. Lum was sentenced to life imprisonment at Level V on the charge of unlawful sexual intercourse and to an additional 5 years imprisonment at Level V on the burglary charge. The convictions and sentences were affirmed on direct appeal.¹ In April 2001, Lum filed a motion to correct his sentence.² On April 19, 2001, the Superior Court modified the language of the sentencing order to conform to the statutory language in effect on the date of Lum's original sentencing,³ but did not modify the substance of the sentence.

(4) Lum claims, first, that his life sentence is illegal because it does not reflect the statutory language in effect at the time he was sentenced and, second, that it exceeds the maximum sentence authorized by law. As to both claims, Lum essentially argues that he should not have been given a life sentence because the statute did not explicitly authorize a

¹*Lum v. State*, No. 106, 1989 (Del. Dec. 20, 1989).

²SUPER. CT. CRIM. R. 35(a).

³DEL. CODE ANN. tit. 11, § 4209A (1987).

life sentence as a punishment for the crime of Unlawful Sexual Intercourse in the First Degree.⁴ There is no merit to this argument. At the time Lum was sentenced, the crime of unlawful sexual intercourse was a Class A Felony⁵ and carried a mandatory life sentence.⁶ As such, the Superior Court was without discretion to impose anything other than a life term.⁷

(5) Also unavailing is Lum's third claim that the Superior Court lacked jurisdiction to convict and sentence him because he never had a preliminary hearing in the Court of Common Pleas and never was formally indicted. This claim was not raised in the Superior Court in the first instance and this Court, therefore, will not address it in this appeal.⁸ Lum improperly asserts this claim pursuant to Rule 35 in any case. "The 'narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.'"⁹ A determination of Lum's claim would

⁴*Id.*

⁵DEL. CODE ANN. tit. 11, § 775 (1987).

⁶DEL. CODE ANN. tit. 11, § 4205(b) (1) (1987).

⁷*Hammond v. State*, No. 356, 1998 (Del. Nov. 16, 1998).

⁸SUPR. CT. R. 8.

⁹*Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998) (quoting *Hill v. United States*, 368 U.S. 424, 430 (1962)).

require this Court to examine alleged errors occurring prior to the imposition of Lum's sentence.

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

BY THE COURT:

/s/ Randy J. Holland
Justice