IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM GREGORY,	§
	§ No. 191, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9811012362
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 22, 2013 Decided: January 7, 2014

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

ORDER

This 7th day of January 2014, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

- (1) The defendant-appellant, William Gregory, filed an appeal from the Superior Court's March 26, 2013 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we affirm.
- (2) The record before us reflects that, in February 2000, Gregory was found guilty by a Superior Court jury of Attempted Murder in the First Degree, Conspiracy in the First Degree, Assault in the Second Degree, Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced

to a total of 30 years of Level V incarceration, to be followed by decreasing levels of supervision. This Court affirmed Gregory's convictions on direct appeal. Gregory's two subsequent motions for postconviction relief were denied by the Superior Court. This Court affirmed the Superior Court's decisions in both cases.

- (3) In this appeal from the Superior Court's denial of his motion to correct an illegal sentence, Gregory claims that he is entitled to good time credits on his sentence for Possession of a Firearm During the Commission of a Felony and that the Superior Court incorrectly determined that he is not. His underlying argument is that his sentence is subject to the provisions of Del. Code Ann. tit. 11, §1447A(d), which violates the *ex post facto* clause of the Delaware and United States Constitutions.
- (4) In its answering brief, the State contends that Gregory's offender status sheet reflects that he is, in fact, receiving good time credits on all of his sentences and that those good time credits have advanced his release date. Specifically, the State contends, Gregory's offender status sheet reflects that he has earned 1,068 days of statutory good time credits and also has earned meritorious good time credits, thereby advancing his release date by more than 3 years.

¹ Gregory v. State, 2001 WL 874766 (Del. July 25, 2001).

² Gregory v. State, 2006 WL 2950490 (Del. Oct. 17, 2006); Gregory v. State, 2010 WL 3636190 (Del. Sept. 20, 2010).

(5) Relief under Rule 35(a) is available only if the sentence in

question a) exceeds the statutorily-authorized limits; b) violates double

jeopardy; c) is ambiguous with respect to the time or manner in which it is to

be served; d) is internally contradictory; e) omits a term required to be

imposed by statute; f) is uncertain as to its substance; or g) is a sentence that

the judgment of conviction did not authorize.³

(6) In this case, Gregory has failed to demonstrate that any of his

sentences is illegal under Rule 35(a). Moreover, there is no apparent factual

basis for Gregory's claim that he has not received good time credit on all of

his sentences, including his sentence for Possession of a Firearm During the

Commission of a Felony. As such, the Superior Court's denial of Gregory's

Rule 35(a) motion must be affirmed, although on a ground different from

that relied upon by the Superior Court.⁴

NOW, THEREFORE, IT IS ORDERED that the judgment of the

Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger

Justice

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

⁴ Unitrin, Inc. v. American General Corp., 651 A.2d 1361, 1390 (Del. 1995).

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