

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE)	
)	
v.)	ID: 1303000081
)	
SHAWN L. BARBER,)	
)	
Defendant.)	

ORDER

**Upon Defendant’s Motion for Correction of an Illegal Sentence
Pursuant to Rule 35(a) – DENIED as legally frivolous.**

1. On June 10, 2015, Defendant, who was previously declared a habitual criminal under 11 *Del. C.* § 4214(a), was sentenced for a second probation violation in the above-case. The sentence called for ten months in prison under 11 *Del. C.* § 4204(k).
2. Defendant did not file an appeal, although he received legal advice about that when he was sentenced June 10, 2015.
3. On July 20, 2015, after the time for direct appeal had run, Defendant filed the instant motion. Cutting through the legal mumbo-jumbo, Defendant incorrectly alleges that his sentence was enhanced because of, or it was enhanced inconsistent with, his having been sentenced under 11 *Del. C.* § 4214(a),

the habitual offender statute. He also sees it as a double-jeopardy problem.

4. Defendant's arguments flow from the fact that he was originally convicted and sentenced for two, separate felonies. As to the first felony, Defendant received a one-year prison sentence under 11 *Del. C.* § 4214(a). As to the second felony, Defendant received three years in prison, suspended for probation.

5. After Defendant served the entire sentence under 11 *Del. C.* § 4214(a), he was placed on probation under the second sentence. As mentioned above, Defendant violated that probationary sentence twice.

6. When Defendant was sentenced for the second probation violation, the court decided he was incorrigible. Nevertheless, the court did not sentence him to the full, three years in prison, as it could have. Instead, also as mentioned above, the court sentenced Defendant to ten months in prison, subject to 11 *Del.C.* § 4204(k). The sentence's intent was to ensure Defendant served the ten months day-for-day.

7. In summary, Defendant was not sentenced twice under 11 *Del. C.* § 4214(a), much less was he sentenced twice under the habitual offender statute for the same offense. The sentence Defendant is now serving was imposed for a different conviction. And, even if Defendant does not see it that way, his current sentence is substantively less than the maximum allowed by law.

8. Finally, taking into account that Defendant did not file a direct appeal from the sentence he claims is illegal, and his current arguments are patently incorrect, the court views this motion as legally frivolous.

For the foregoing reasons, Defendant's July 20, 2015 motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a) is **DENIED** as legally frivolous.

IT IS SO ORDERED.

Date: August 11, 2015

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)
pc: Michael J. Hendee, Deputy Attorney General
Shawn L. Barber, *pro se*, Defendant