

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

October 30, 2014

Larry D. Floyd
12 Nicholas Drive
Dover, DE 19901

RE: *State of Delaware v. Larry D. Floyd*, Def. ID# 88S00074DI

DATE SUBMITTED: September 27, 2014

Dear Mr. Floyd:

Pending before the Court is the motion of defendant Larry D. Floyd (“defendant”) to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a).¹ This is my decision denying the motion.

On January 24, 1989, a jury found defendant guilty of the crimes of unlawful sexual intercourse in the first degree in violation of 11 *Del. C.* 775(2); burglary in the second degree in violation of 11 *Del. C.* § 825; and criminal mischief misdemeanor, in violation of 11 *Del. C.* §

¹In Rule 35(a), it is stated:

Correction of sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

811(a)(1). The crimes were alleged to have occurred on or about January 9, 1988, and defendant was arrested on January 10, 1988. The Court ordered a presentence investigation report (“PSI”) and sentenced defendant on March 3, 1989.

The pertinent sentence is that for the unlawful sexual intercourse in the first degree conviction. As to that crime, he was sentenced, effective January 10, 1988,² to Level 5 for the balance of his natural life. The first twenty years were mandatory pursuant to 11 *Del. C.* § 4209A.³

The Supreme Court previously explained the parameters of Rule 35(a) to defendant:

Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” The purpose of Rule 35 (a) is to permit correction of an illegal sentence, not to re-examine alleged errors occurring at the trial or other proceedings prior to the imposition of sentence. A sentence is illegal when it exceeds the statutorily-authorized limits or violates double jeopardy. A sentence also is illegal if 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 not authorized by the judgment of conviction. [Footnotes and citations omitted].⁴

Defendant’s first argument is indecipherable. He maintains the crimes occurred on January 10, 1988, but he was not sentenced until March 3, 1989 in violation of his 6th and 14th amendment rights. He does not explain what he means by this argument. Because the argument is unintelligible, the Court refuses to address it.

Defendant’s second argument, also, is unintelligible. He argues he was illegally sentenced under 11 *Del. C.* § “4209(a)”. Defendant was not sentenced pursuant to 11 *Del. C.* § 4209(a),

²This sentence gave credit to defendant for time he had been incarcerated since his arrest.

³*Floyd v. State*, 708 A.2d 630, 1998 WL 171525, *1 (Del. Mar. 26, 1998).

⁴*Floyd v. State*, 867 A.2d 901, 2005 WL 535012, *1 (Del. Feb. 10, 2005).

which pertains to murder convictions. Instead, 11 *Del. C.* § 4209A⁵ applied, requiring the imposition of the mandatory 20 years to defendant's sentence. Defendant is well aware of the statute under which he was sentenced as he previously has attacked the legality of that sentence.⁶ Because the argument is not decipherable, I ignore it.

Defendant argues that 11 *Del. C.* § 773 does not allow for a sentence to natural life. Defendant is citing to the current law and seeking to apply it to his case. He cannot do that. The law at the time of the crime, conviction, and sentencing is what applies.⁷ He was found guilty of violating 11 *Del. C.* §775(2)⁸, which was a Class A felony. The applicable sentencing guidelines

⁵This statute, which has since been repealed, stated: "Any person who is convicted of unlawful sexual intercourse in the first degree shall be punished by imprisonment for not less than 20 years without benefit of probation or parole or any other reduction. (63 Del. Laws, c. 393, § 1; 65 Del. Laws, c. 494, § 3.)"

⁶*Floyd v. State*, 708 A.2d, *supra*; *Floyd v. State*, 670 A.2d 1337, 1995 WL 622408, *1 (Del. Sept. 25, 1995); *State v. Floyd*, 1991 WL 269904, * 6 (Del. Super. Dec. 11, 1991), *app. disp.*, 608 A.2d 727, 1992 WL 53409 (Del. Feb. 12, 1992).

⁷*Jones v. State*, 860 A.2d 810, 2004 WL 2154299 (Del. Sept. 20, 2004). *See Floyd v. State*, 708 A.2d, *supra*, wherein the Supreme Court ruled that the provisions of § 4209A governed defendant's sentencing because that was the statute in effect at the time of his trial and sentencing.

⁸11 *Del. C.* § 775 provided as follows:

A person is guilty of unlawful sexual intercourse in the first degree when he intentionally engages in sexual intercourse with another person and any of the following circumstances exist:

(2) the intercourse occurs without the victim's consent and the defendant was not the victim's voluntary social companion on the occasion of the crime and had not permitted the defendant sexual intercourse within the previous 12 months. 65 Del. Laws, ch. 494 (1986).

for a Class A felony required the imposition of a life sentence.⁹ Thus, defendant was sentenced appropriately under the law as it existed at that time.

Defendant argues probation requires him to wear an ankle monitoring bracelet, thereby rendering his sentence illegal.

Pursuant to 11 *Del. C.* §4121(u), the Legislature mandated that all Tier III sex offenders must wear a GPS locator ankle bracelet as a condition of their probation.¹⁰ The Supreme Court has ruled that this statute, which was enacted after defendant's conviction and sentencing, may be imposed on a person in defendant's situation and the imposition thereof does not violate the ex post facto clause of the United States Constitution.¹¹ Defendant's arguments regarding the ankle monitoring bracelet are meritless.

Defendant also argues that a Maryland decision renders Delaware's sex registration requirements invalid as to him. This issue is not appropriate within the context of a motion for correction of an illegal sentence. However, the Court will address it for the sake of judicial economy.

Defendant provides a copy of a newspaper article explaining that the Maryland courts

⁹11 *Del. C.* § 4205(b) provided:

(b) The term of imprisonment which the court may impose for a felony is fixed as follows:

(1) For a class A felony, life imprisonment....

¹⁰11 *Del. C.* § 4121(u) provides:

Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer.

¹¹*Hassett v. State*, 12 A.3d 1154, 2011 WL 446561 (Del. Feb. 8, 2011).

have found that those who committed crimes before 1995 cannot be forced to register with the State of Maryland's sex offender registry because of a violation of Maryland's state constitution. That decision involving Maryland's constitution is irrelevant to defendant's case. Delaware's Supreme Court has found that neither Delaware's State Constitution nor the Federal Constitution are violated by the sex offender tiering and registration process.¹² This claim fails.

For the foregoing reasons, defendant's motion to correct an illegal sentence is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary's Office
Department of Justice

¹²*Helman v. State*, 784 A.2d 1058, 1064 (Del. 2001).