

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID H. DICKERSON,	§
	§ No. 544, 2013
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0811010588
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 5, 2013
Decided: January 2, 2014

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

ORDER

This 2nd day of January 2014, 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, David H. Dickerson, filed an appeal from the Superior Court’s September 11, 2013 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). 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 this appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in June 2009, Dickerson was found guilty by a Superior Court jury of Burglary in the Third Degree, Attempted Burglary in the Third Degree, Possession of Burglary Tools, Conspiracy in the Second Degree and Criminal Mischief. He was sentenced to 11 years of Level V incarceration, to be suspended after 9 months for 1 year of Level III probation. Dickerson did not file a direct appeal.

(3) The Department of Correction permitted Dickerson to serve the last 180 days of his Level V sentence at Level IV Work Release. On August 11, 2010, Dickerson left the Work Release Center on a pass and did not return. He was apprehended in New York and extradited to Delaware. In December 2010, Dickerson pleaded guilty to Escape in the Third Degree. He was sentenced on that conviction to 60 days at Level V. In addition, Dickerson was found to have committed a violation of probation ("VOP") and was sentenced to 10 years at Level V. Dickerson did not pursue an appeal from his VOP sentence. Dickerson has filed multiple motions for correction of sentence as well as postconviction motions containing

¹ Supr. Ct. R. 25(a).

argument regarding his allegedly illegal VOP sentence, none of which has been successful.

(4) In his appeal from the Superior Court's denial of his most recent motion for correction of his VOP sentence, Dickerson claims that his due process rights were violated as a result of the imposition of the VOP sentence, constituting "extraordinary circumstances" under Rule 35(b).²

(5) Under Rule 35(a), a sentence is illegal only if it a) exceeds the statutorily-authorized limits; b) violates double jeopardy; c) is ambiguous with respect to the time and 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 does not authorize.³ Dickerson has failed to demonstrate that his claim of an illegal sentence fits within any of these categories or that Rule 35(b)'s "extraordinary circumstances" exception is applicable.

(6) Most importantly, Dickerson has already pursued the same claim he raises here on multiple occasions, with no success. As recently as April 2013, this Court affirmed the Superior Court's denial of Dickerson's

² Because Dickerson presents no argument regarding his appeal from the Superior Court's denial of his motion for the appointment of counsel, we deem that issue to be waived and will not address it in this appeal. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

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

repetitive claim that his VOP sentence is illegal.⁴ Under Rule 35(b), the Superior Court may not consider repetitive requests for sentence modification.⁵ We, therefore, conclude that the Superior Court committed no error or abuse of discretion when it denied Dickerson's repetitive motion for correction of an allegedly illegal VOP sentence.

(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.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Dickerson v. State*, 2013 WL 1559650 (Del. Apr. 11, 2013).

⁵ *Foster v. State*, 2007 WL 2984371 (Del. Oct. 15, 2007).