

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES G. BROWN,	§
	§
Defendant Below-	§ No. 11, 2014
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 88004213DI
Plaintiff Below-	§
Appellee.	§

Submitted: March 6, 2014
Decided: April 4, 2014

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

ORDER

This 4th day of April 2014, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, James Brown, filed this appeal from the Superior Court’s denial of his motion for correction of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Brown’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Brown pled guilty in March 1989 to one count of Unlawful Sexual Intercourse in the First Degree. The Superior Court immediately sentenced Brown to life imprisonment and designated that the first

twenty years were a mandatory term of incarceration. Brown unsuccessfully moved to withdraw his plea. We affirmed the Superior Court's decision on appeal.¹ Since then, Brown has filed several unsuccessful petitions for postconviction and habeas corpus relief. In December 2012, Brown filed a motion to vacate, set aside or correct his sentence asserting that his guilty plea agreement had guaranteed that Brown would be eligible for parole after serving twenty years of his sentence. After receiving a belated response from the State, the Superior Court denied Brown's motion. This appeal followed.

(3) The gist of Brown's complaints on appeal are that the Superior Court erred in considering the State's belated response to his motion, in considering arguments not presented by the parties, and in denying his motion based on the State's breach of the plea agreement. Brown again alleges that the State promised his parole eligibility after twenty years and that the Board of Parole's refusal to grant his parole application is a breach of his plea agreement.

(4) We find no merit to Brown's appeal. A motion for correction of sentence is very narrow in scope.² Superior Court Criminal Rule 35(a) permits relief when "the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause."³ A sentence also is illegal if it "is

¹ *Brown v. State*, 1989 WL 114629 (Del. Sept. 11, 1989).

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

³ *Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4th Cir. 1992)).

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 the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.”⁴

(5) In this case, Brown is not even contending that his sentence is illegal. Instead, he is contending that the State is in breach of the plea agreement because the Board of Parole denied his application for parole, which the State promised he would receive after serving twenty years of his sentence. Brown’s argument is unsupported by the record. The guilty plea agreement and Brown’s guilty plea colloquy do not reflect any promise of Brown’s release on parole after serving twenty years. Rather, as the Superior Court properly found, both the agreement and the colloquy reflect Brown’s understanding that the first twenty years of his sentence were mandatory and that he would not be eligible for parole until after serving twenty years. There is no promise that he would be granted parole after twenty years. Accordingly, we find no error or abuse of the Superior Court’s discretion in denying Brown’s motion to vacate, set aside or correct his sentence. Moreover, it was entirely within the Superior Court’s discretion to request and consider the State’s untimely response to Brown’s motion.

⁴ *Id.* (quoting *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir. 1997)).

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

BY THE COURT:

/s/ Carolyn Berger
Justice