

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

STATE OF DELAWARE	)	
	)	
	)	
v.	)	ID#: 0608025757
	)	
LEROY COOK, SR.,	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Motion for Correction of an Illegal Sentence – DENIED.**

1. On May 22, 2015, Defendant filed a “Motion for Correction of an Illegal Sentence,” purportedly under Superior Court Criminal Rule 35. Specifically, Defendant alleges, in part:

The court relied upon incorrect and misleading information which caused the defendant to be misinformed as to the factual basis of the charge that he pled guilty to. The end result was that the defendant received an illegal sentence.

Basically, in further argument, Defendant explains how the process leading to his guilty plea and sentencing was defective.

2. Defendant concludes that the conduct he admitted in his guilty plea amounts to Rape in the Fourth Degree, not Rape in the Second Degree.

3. Defendant does not allege that the paperwork associated with his guilty plea shows that he was pleading guilty to Rape in the Fourth Degree, as opposed to Rape in the Second Degree. Nor does he allege that the court purported to sentence him for anything other than Rape in the Second Degree. Finally, Defendant does not allege that the sentence he received was an illegal one for Rape in the Second Degree. Moreover, Defendant did not file a direct appeal from his plea and sentence. Again, Defendant's claim here is he was forced to plead guilty to the wrong charge, not that he was sentenced illegally for the charge to which he pleaded guilty.

4. In essence, Defendant's motion is not one challenging an illegal sentence under Superior Court Criminal Rule 35.<sup>1</sup> It is a motion for postconviction relief that should have been filed under Superior Court Criminal Rule 61.<sup>2</sup> As to that, the court has already addressed his claims in the six, repetitive motions for postconviction relief he has filed.<sup>3</sup>

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<sup>1</sup> See *Nichols v. State*, 913 A.2d 570 (Del. 2006) (TABLE) (“It is well-established that the grounds for a motion seeking correction of an illegal sentence under . . . Rule 35(a) must be limited to alleged errors with the sentence itself, e.g., the sentence exceeds the statutory limitation or the sentence violates double jeopardy.”).

<sup>2</sup> *Id.* (“Rule 35(a) is not an appropriate means to argue alleged errors in the underlying conviction . . . the relief sought by [defendant] could only be pursued through a motion for postconviction relief under . . . Rule 61.”).

<sup>3</sup> See Super. Ct. Crim. R. 61(i)(4); *State v. Cook*, 2014 WL 1384642 (Del. Super. Mar. 24, 2014) (denying Defendant's sixth motion for postconviction relief).

5. In summary, Defendant pleaded guilty to Rape in the Second Degree, and he received a lawful sentence for that crime. Accordingly, he is not entitled to relief under Superior Court Criminal Rule 35. This motion is merely a subterfuge to avoid Rule 61's bars. Under the circumstances, it is legally frivolous and filed in bad faith.

For the foregoing reasons, Defendant's Motion for Correction of an Illegal Sentence is **DENIED**.

**IT IS SO ORDERED.**

Date: June 16, 2015

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Criminal Division)  
Renee L. Hrivnak, Deputy Attorney General  
Leroy Cook, Sr., *pro se*, Defendant