

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROGER L. JOHNSON,	§
	§
Defendant Below,	§ No. 314, 2021
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID No. 9908000065 (K)
Plaintiff Below,	§
Appellee.	§
	§

Submitted: October 25, 2021

Decided: January 12, 2022

Before **SEITZ**, Chief Justice; **TRAYNOR** and **MONTGOMERY-REEVES**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

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

(2) The record reflects that in May 2000, a Superior Court jury convicted Johnson of two counts of first-degree robbery, two counts of possession of a firearm during the commission of a felony, and one count of second-degree conspiracy. The

Superior Court deferred sentencing pending a presentence investigation. On June 23, 2000, the State filed a motion to declare Johnson a habitual offender. On November 15, 2000, the Superior Court granted the State's motion and sentenced Johnson as a habitual offender to a minimum-mandatory term of eighty years of Level V incarceration, followed by two years of probation. We affirmed Johnson's convictions and sentence on appeal.¹ Since that time, Johnson has filed various unsuccessful motions, including three motions for postconviction relief and a motion for sentence modification.

(3) In September 2021, Johnson filed a motion for correction of illegal sentence under Superior Court Criminal Rule 35(a), arguing that his sentence is illegal because the State had not given notice of its motion to declare Johnson a habitual offender prior to sentencing so that the court could review it with Johnson. The Superior Court denied the motion, and this appeal followed.

(4) On appeal, Johnson reiterates his argument that his sentence is illegal because he was denied the opportunity to contest the information contained in the State's motion to declare him a habitual offender until the sentencing hearing. As this Court has stated many times, a sentence is illegal if it exceeds statutory limits, violates double jeopardy, 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

¹ *Johnson v. State*, 2002 WL 1343761 (Del. June 18, 2002).

statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.² Accordingly, while titled as a motion for correction of illegal sentence, Johnson's motion is, in fact, a motion for correction of a sentence imposed in an illegal manner.³

(5) A motion for correction of a sentence imposed in an illegal manner is subject to Rule 35(b)'s ninety-day time bar.⁴ Johnson's motion, which was filed more than twenty years after his sentencing, is clearly untimely. In any event, Johnson's argument is belied by the record: (i) the State filed its motion to declare Johnson a habitual offender five months prior to Johnson's sentencing; (ii) Johnson, with the assistance of counsel, argued that the habitual offender statute was unconstitutional; and (iii) the sentencing transcript reflects that the Superior Court considered the contents of the motion and granted it before sentencing Johnson. Finally, we note that Johnson does not allege that the State's motion to declare him a habitual offender misrepresented his criminal record.

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

³ *McCleaf v. State*, 2007 WL 2359554, at *1 (Del. Aug. 20, 2007).

⁴ Superior Court Criminal Rule 35(a) states that the court "may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence." Rule 35(b) governs motions for reduction of sentence and provides that the court "may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed."

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves
Justice