

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY THOMAS,	§
	§ No. 473, 2022
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 1403008516 (K)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: December 28, 2022

Decided: January 26, 2023

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

Upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Jeffrey W. Thomas, filed this appeal from the Superior Court’s denial of his motion for correction of sentence under Superior Court Criminal Rule 35. The State has moved to affirm the judgment below on the ground that it is manifest on the face of Thomas’s opening brief that his appeal is without merit. We agree and affirm.

(2) In 2015, a Superior Court jury found Thomas guilty of second-degree burglary, theft of a motor vehicle, second-degree conspiracy, and misdemeanor theft. The State sought habitual-offender sentencing under 11 *Del. C.* § 4214(a). On

March 12, 2015, the Superior Court sentenced Thomas as follows: for second-degree burglary, as a habitual offender, to seventeen years of incarceration; for theft of a motor vehicle, as a habitual offender, to two years of incarceration; for second-degree conspiracy, as a habitual offender, to two years of incarceration; and for misdemeanor theft, to a fine and one year of incarceration, suspended for decreasing levels of supervision. This Court affirmed on direct appeal.¹

(3) Thomas has filed several motions seeking postconviction relief or sentence correction, which have been denied.² In December 2022, Thomas filed another motion for correction of sentence. The Superior Court denied the motion, and Thomas has appealed to this Court. Thomas contends that his sentence is illegal because his prior conviction in New Jersey for third-degree burglary could not be used as predicate offenses for habitual-offender sentencing under Section 4214(a). He also asserts various claims of ineffective assistance of counsel.

(4) We review the denial of a motion for correction of sentence under Rule 35(a) for abuse of discretion.³ To the extent that the claim involves a question of

¹ *Thomas v. State*, 2015 WL 9265084 (Del. Dec. 17, 2015).

² See, e.g., *Thomas v. State*, 2022 WL 16704679 (Del. Nov. 3, 2022) (affirming denial of motion for correction of illegal sentence); *Thomas v. State*, 2021 WL 5822721 (Del. Dec. 7, 2021) (affirming denial of motion for correction of illegal sentence); *Thomas v. State*, 2021 WL 2935351 (Del. July 12, 2021) (affirming denial of third motion for postconviction relief); *Thomas v. State*, 2019 WL 610820 (Del. Feb. 12, 2019) (affirming denial of motion for postconviction relief).

³ *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014).

law, we review the claim *de novo*.⁴ The circumstances in which the Superior Court will change a sentence under Rule 35(a) are narrow.⁵ Rule 35(a) permits relief when the sentence imposed exceeds the statutory limits or violates the Double Jeopardy Clause.⁶

(5) We conclude that the Superior Court’s denial of Thomas’s motion should be affirmed. This Court has already determined that Thomas’s claim that his New Jersey convictions for third-degree burglary were not qualifying predicate offenses for habitual-offender sentencing under Section 4214(a) is without merit.⁷ There is no basis under Delaware law for Thomas to relitigate that issue.⁸ As we previously determined, Thomas was subject to habitual-offender sentencing under the applicable version of Section 4214(a) because he had three prior felony convictions.⁹ Thomas’s claims of ineffective assistance of counsel do not provide a

⁴ *Id.*

⁵ *Roten v. State*, 2019 WL 1499908, at *1 (Del. Apr. 3, 2019) (citing *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998)).

⁶ *Id.*

⁷ See *Thomas*, 2015 WL 9265084, at *3 (“Thomas’s claim that his New Jersey convictions for third degree burglary were not qualifying predicate offenses for habitual offender sentencing is simply incorrect. . . . Thomas’s felony convictions in New Jersey qualified as predicate offenses under Section 4214(a). His claim to the contrary has no merit.”); see also *Thomas*, 2021 WL 5822721, at *1 (“This Court has already determined that Thomas’s claim that his New Jersey convictions for third-degree burglary were not qualifying predicate offenses for habitual-offender sentencing under Section 4214(a) is without merit.”).

⁸ *Thomas*, 2021 WL 5822721, at *1; *Weber v. State*, 2019 WL 3268813, at *3 (Del. July 19, 2019).

⁹ *Thomas*, 2021 WL 5822721, at *1; *Thomas*, 2015 WL 9265084, at *3; see also *Roten*, 2019 WL 1499908, at *1 (affirming denial of motion for correction of illegal sentence based on claim that out-of-state conviction did not qualify as predicate felony); *Weber v. State*, 971 A.2d 135, 158-60 (Del. 2009) (rejecting challenge to habitual-offender sentence based on predicate offense that

basis for relief under Rule 35(a).¹⁰ We warn the appellant that if he continues to file appeals from orders dismissing repetitive claims in the Superior Court, he will be enjoined from filing future appeals without leave of the Court.

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/ Collins J. Seitz, Jr.
Chief Justice

defendant had no right to appeal because the sentence imposed for the predicate offense did not satisfy the jurisdictional threshold).

¹⁰ *Taylor v. State*, 2009 WL 2415293, at *1 (Del. Aug. 7, 2009).