IN THE SUPREME COURT OF THE STATE OF DELAWARE

MELVIN KELLUM,	§	
	§	No. 104, 2024
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware
v.	§	
	§	Cr. ID No. 0609010553 (N)
STATE OF DELAWARE,	§	
	§	
Appellee.	§	

Submitted: May 20, 2024
Decided: July 16, 2024

Before **TRAYNOR**, **LEGROW**, and **GRIFFITHS**, 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, Melvin Kellum, filed this appeal from the Superior Court's denial of a motion for correction of illegal sentence. The State has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Kellum's opening brief that his appeal is without merit. We agree and affirm.

(2) At the conclusion of a bench trial in June 2007, Kellum was found guilty of first-degree robbery, first-degree assault, second-degree conspiracy, two counts of possession of a firearm during the commission of a felony, and possession of a handgun by a prohibited juvenile. On August 24, 2007, the Superior Court

sentenced Kellum to a total of nineteen years of unsuspended incarceration, followed by probation. This Court affirmed on direct appeal.[1]

(3) Over the years, Kellum has filed various unsuccessful motions for postconviction relief or sentence modification or reduction. In November 2023, Kellum filed a motion for correction of illegal sentence. He contended that his sentence was illegal because the Superior Court (i) failed to consider information about Kellum's mental health contained in a presentence investigation report that was prepared in a separate case;[2] and (ii) found an aggravating factor of repetitive criminal conduct based on Kellum's juvenile adjudications that occurred before age 14. The Superior Court denied the motion as untimely and repetitive under Superior Court Rule of Criminal Procedure 35(b). The court also found the motion to be without merit because a sentencing judge has broad discretion in determining what information to rely upon from a presentence report and other sources and, although Kellum's sentence was above the Sentencing Accountability Commission ("SENTAC") guidelines, it was well within the statutory range.

[1] *Kellum v. State*, 945 A.2d 1167, 2008 WL 683667 (Del. Mar. 14, 2008) (TABLE).

[2] The charges in the case presently before the Court arose after Kellum shot Harry Hale in the leg on September 11, 2006, and an accomplice took $600 from Hale's pocket. *Id.* at *1. In the case in which the presentence investigation report was prepared, a discussion between Kellum and Adrien Turner on March 10, 2006, turned into an argument, and Kellum pulled out a gun and shot Turner in the thigh and four times in the waist area. *Kellum v. State*, 950 A.2d 659, 2008 WL 2070615, at *1 (Del. May 16, 2008) (TABLE).

(4) On appeal, Kellum argues that the Superior Court erroneously considered the motion under Rule 35(b) instead of Rule 35(a). He contends that his sentence is illegal because (i) SENTAC guidelines state that only juvenile adjudications at age 14 or older shall be counted in determining that prior criminal history is an aggravating factor, and the sentencing judge relied on Kellum's adjudications between the ages of 10 and 13; and (ii) the sentencing judge did not consider as a mitigating factor relevant information about Kellum's mental health history contained in the presentence report prepared in the other case.

(5) We conclude that, even applying the standards applicable under Rule 35(a), Kellum is not entitled to relief. This Court reviews 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 law, we review it *de novo*.[4] 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 statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.[5] Kellum asserts that the sentencing judge's consideration of the juvenile adjudications and failure to consider

[3] *Fountain v. State*, 100 A.3d 1021, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014) (TABLE).
[4] *Id.*
[5] *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

relevant presentence report information resulted in the imposition of a sentence that was not authorized by the judgment of conviction.

(6) Contrary to Kellum's contention, the sentencing transcript reflects that the sentencing judge did consider Kellum's mental health history and the presentence report prepared in the other case. When the judge asked Kellum if he would like to say anything before the court imposed the sentence, Kellum said that he had "a mental health problem."[6] He named several psychiatric treatment centers at which he had received both inpatient and outpatient care since he was six years old and stated that since he had stopped getting treatment at those facilities he had not been receiving needed medication and had been "getting in trouble."[7] He stated that he would like the court to consider that information. After determining that such information was not included in the presentence report prepared in this case, the court reviewed the presentence report from the other case. The court observed that the report contained information regarding Kellum's behavioral and educational issues going back to kindergarten, including several alternative schools that he had attended; Kellum's time at the Rockford Center in 2001 and his mental-health and discharge assessment at that time; and "a child mental health record indicating that

[6] *State v. Kellum*, Cr. ID No. 0609010553, Transcript of Sentencing Hearing, at 11:20-21 (Del. Super. Ct. Aug. 24, 2007).
[7] *Id.* at 11:22-12:15.

he was admitted to MeadowWood in 2000."[8] The court then stated: "Aggression and disruptive behavior have been noted from an early age. So there's no question that you are, sadly, acting out consistent with the forecast of people who have seen you through the years. But that doesn't change your legal obligation."[9] The record clearly reflects that the court considered the mental health information contained in the presentence report in the other case and imposed the sentence that the court deemed appropriate, in the exercise of its sentencing discretion. Kellum has not established that the sentence is illegal.[10]

(7) Kellum also argues that his sentence is illegal because the sentencing judge found an aggravating factor of repetitive criminal conduct based on juvenile adjudications occurring before Kellum was fourteen years old. We disagree. Although the State asserted that the repetitive-conduct aggravator applied based, at

[8] *Id.* at 15:14-16:21.
[9] *Id.* at 16:23-17:6.
[10] *Cf. Warncke v. State*, 303 A.3d 36, 2023 WL 5028842, at *2 (Del. Aug. 8, 2023) (TABLE)(affirming fifteen-year sentence for assault conviction and rejecting claim that sentencing judge's statement that there were no mitigating factors, "particularly when viewed against the myriad mitigating factors the defense pointed to in its sentencing presentation, which included [the appellant's] life-long struggles with mental health and alcoholism and his abusive and dysfunctional childhood," demonstrated the judge's closed mind); *Bednash v. State*, 47 A.3d 971, 2012 WL 2343593, at *1 (Del. June 19, 2012) (TABLE) (stating that appellant's claim that the sentencing judge abused her discretion was "belied by the transcript of the sentencing hearing, which reflects that the judge considered evidence of [the appellant's] mental health problems and his history of addiction as possible mitigating factors" but "instead of viewing [the appellant] as a victim, the judge held him responsible for failing to take advantage of the opportunities he had to address his addictions"); *Siple v. State*, 701 A.2d 79, 84 (Del. 1997) ("[T]he mitigating weight to be accorded to any degree of mental illness that does not rise to the level of legal insanity is properly entrusted to the discretion of the sentencing judge.").

least in part, on Kellum's juvenile convictions, the sentencing judge did not explicitly identify Kellum's juvenile adjudications as establishing an aggravating factor.[11] The court did find it "remarkable" that Kellum had the two similar assault cases in one year.[12] A sentencing court's "fail[ure] to state [an] aggravating factor for the record during the sentencing hearing" and its "deviation from the voluntary and non-binding sentencing guidelines is not a basis to vacate a sentence that is within statutory limits."[13] The Superior Court did not err by denying Kellum's motion for correction of illegal sentence.

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/ Abigail M. LeGrow
Justice

[11] As noted above, the court did consider Kellum's history of aggressive and disruptive behavior, but did not explicitly identify either that history or Kellum's juvenile adjudications as aggravating factors under the sentencing guidelines.
[12] *Kellum*, Cr. ID No. 0609010553, Transcript of Sentencing Hearing, at 15:15-17.
[13] *Brochu v. State*, 133 A.3d 557, 2016 WL 690650, at *4 (Del. Feb. 19, 2016) (TABLE) (internal quotation omitted); *see also Mayes v. State*, 604 A.2d 839, 845 (Del. 1992) (stating that "[i]t is established Delaware law that a defendant has no legal or constitutional right to appeal a statutorily authorized sentence simply because it does not conform to the sentencing guidelines established by the Sentencing Accountability Commission," and rejecting claim that Superior Court erred by "failing to make a matter of record its reasons for imposing a sentence in excess of the SENTAC guidelines").