

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISAIAS R. ORTIZ,	§
	§
Defendant Below,	§ No. 249, 2025
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 0210012072 (N)
	§
Appellee.	§

Submitted: July 22, 2025
Decided: September 23, 2025

ORDER

Before **VALIHURA, TRAYNOR**, and **LEGROW**, Justices.

After 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, Isaias R. Ortiz, appeals from the Superior Court’s order denying his motion for correction of an illegal sentence. The State has filed a motion to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In 2003, a Superior Court jury found Ortiz guilty of multiple drug offenses and other crimes. For his conviction for possession with intent to deliver (“PWID”) cocaine under 16 *Del. C.* § 4751, the Superior Court sentenced Ortiz to serve twenty years in prison, with the first fifteen years imposed as a minimum-

mandatory sentence. Under the then-extant version of Section 4751, PWID cocaine was a class C felony,¹ which would have been subject to a sentencing range of zero to ten years' imprisonment.² But Ortiz's sentence was enhanced under 16 *Del. C.* § 4763(a)(3) based on a prior drug conviction in New York.³

(3) Ortiz has filed numerous motions for postconviction relief or challenging his sentences. On May 20, 2025, the Superior Court denied a motion in which Ortiz argued that his PWID sentence is illegal under *Erlinger v. United States*⁴ because the Superior Court, rather than a jury, determined that Ortiz had a prior conviction that subjected him to enhanced sentencing under Section 4763(a)(3). Ortiz has appealed to this Court.

(4) We review the denial of a motion for correction of an illegal sentence for abuse of discretion, although questions of law are reviewed *de novo*.⁵ 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,

¹ 16 *Del. C.* § 4751(a) (2002).

² 11 *Del. C.* § 4205(b)(3) (2002).

³ See 16 *Del. C.* § 4763(a)(3) (2002) (providing for a sentence up to 99 years, and requiring a 15-year minimum-mandatory sentence, for a PWID conviction under Section 4751 if the defendant “has previously been convicted of any offense under this chapter, or under any statute of the United States or of any state relating to the delivery or possession with intent to deliver of a controlled substance or counterfeit substance classified in Schedules I and II as a narcotic drug”).

⁴ 602 U.S. 821 (2024).

⁵ *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014).

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.⁶

(5) In *Erlinger*, the United States Supreme Court considered a sentence imposed under the federal Armed Career Criminal Act and stated that “[v]irtually ‘any fact’ that ‘increase[s] the prescribed range of penalties to which a criminal defendant is exposed’ must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea).”⁷ But the Court left intact the “narrow exception”⁸ set forth in *Almendarez-Torres v. United States*⁹ “permitting judges to find only the fact of a prior conviction.”¹⁰ “Under that exception, a judge may do no more,” when determining whether a prior conviction triggers an enhanced penalty, “than determine what crime, with what elements, the defendant was convicted of.”¹¹

(6) In the decision under review in this appeal, the Superior Court determined that Ortiz’s sentence is not illegal because the court “did no more than determine what crime, with what elements Ortiz was convicted of in order to find

⁶ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁷ *Erlinger*, 602 U.S. at 834 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)) (second alteration in original).

⁸ *Id.* at 838 (internal quotation omitted).

⁹ 523 U.S. 224 (1998).

¹⁰ *Erlinger*, 602 U.S. at 838 (internal quotations omitted); *see also Apprendi*, 530 U.S. at 490 (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”).

¹¹ *Erlinger*, 602 U.S. at 838 (internal quotations omitted).

that the fact of Ortiz’s prior conviction enhanced his PWID sentence.”¹² After careful consideration, we affirm.

(7) At sentencing, the court inquired about the applicable minimum-mandatory sentences for Ortiz’s offense; the prosecutor stated that Ortiz had a prior PWID conviction; and Ortiz’s counsel acknowledged that the fifteen-year minimum-mandatory applied to the PWID offense for which Ortiz was being sentenced.¹³ The record reflects that Ortiz was convicted on December 12, 1997, of the felony of Criminal Sale of a Controlled Substance in the Third Degree (Cocaine), under New York Penal Law 220.39. The Superior Court has previously determined that Ortiz’s New York conviction subjected him to an enhanced penalty under Section 4763, a decision which this Court affirmed.¹⁴ Under these circumstances, we agree with the Superior Court’s determination that Ortiz’s PWID sentence is not illegal under *Erlinger*, because the Superior Court was permitted to find the fact of Ortiz’s prior conviction under *Almendarez-Torres*.¹⁵

¹² *State v. Ortiz*, 2025 WL 1445841, at *3 (Del. Super. Ct. May 20, 2025).

¹³ *State v. Ortiz*, Crim. ID No. 0210012072, Sentencing Tr. at 3:9-4:23 (Del. Super. Ct. Dec. 19, 2003).

¹⁴ *See Ortiz v. State*, 2023 WL 380362, at *2 (Del. Jan. 24, 2023) (“Finally, for PWID, Ortiz—a person previously convicted of PWID—faced an enhanced penalty: a minimum-mandatory sentence of 15 years and up to 99 years in prison. His 20-year sentence for PWID therefore falls within statutory limits and is not illegal.” (citation omitted)). Ortiz did not present his argument that this determination came too late to the Superior Court in the first instance, and we therefore need not consider it on appeal. DEL. SUPR. CT. R. 8.

¹⁵ As the Superior Court recognized, *Almendarez-Torres* has been subject to significant criticism, but it has not been overruled. *See Erlinger*, 602 U.S. at 837-38 (distinguishing *Almendarez-Torres*, observing that it “persists as a ‘narrow exception’ permitting judges to find only ‘the fact of a prior

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

BY THE COURT:

/s/ Gary F. Traynor
Justice

conviction,”” and stating that the litigants in *Erlinger* had not asked the Court to revisit it (quoting *Alleyne v.*, 570 U.S. 99, 111 n.1 (2013))).