

STATE OF DELAWARE)
)
 v.) ID No. 1703001172
) Cr. A. Nos. IN17-03-0408, etc.
 KASHIEM THOMAS,)
 Defendant.)

Decided: July 22, 2026

ORDER

(1) On March 2, 2017, Mr. Thomas was arrested and charged with first-degree murder and related weapons counts.² Following a six-day jury trial, Mr. Thomas was convicted of first-degree murder and possession of a

² D.I. 1; D.I. 5 (Indictment).

firearm during the commission of a felony (PFDCF).³

(2) After post-trial motion practice had concluded, Mr. Thomas was sentenced as follows: for Murder First Degree (IN17-03-0408)—a natural life term of imprisonment; for PFDCF (IN17-03-0409)—15 years at Level V.⁴ So, both each individual segment and the cumulation of Mr. Thomas’s sentence is well within the baseline minimum and maximum incarcerative terms the relevant statutes required.⁵

(3) Mr. Thomas filed a direct appeal to the Delaware Supreme Court where he argued that the State had presented insufficient evidence to convict him.⁶ His convictions and sentence were affirmed.⁷

(4) He then filed an unsuccessful Rule 61 petition for postconviction relief.⁸ And the Delaware Supreme Court has recently affirmed this Court’s

³ D.I. 62 (Verdict Form); D.I. 63. The State entered a *nolle prosequi* as to a third indicted offense—possession of a firearm by a person prohibited (IN17-03-1728)—which had been severed by agreement for trial by the Court without a jury. *See* D.I. 53.

⁴ D.I. 89 (Modified Sentencing Order).

⁵ *See* DEL. CODE ANN. tit. 11, § 636 and 4209(a) (2016) (“Punishment for first-degree murder. — Any person who is convicted of first-degree murder for an offense that was committed after the person had reached the person’s eighteenth birthday shall be punished by . . . imprisonment for the remainder of the person’s natural life without benefit of probation or parole or any other reduction”; *id.* at §§ 1447A(c) and 4205(b)(2) (PFDCF is a class B felony carrying a “minimum sentence of 3 years” and a ceiling of “up to 25 years to be served at Level V”).

⁶ *See Thomas v. State*, 2020 WL 1061692, at *1-2 (Del. Mar. 4, 2020) (affirmance on direct appeal).

⁷ *Id.* at *3.

⁸ *State v. Thomas*, 2024 WL 5117117 (Del. Super. Ct. Dec. 16, 2024) (denying

denial of that application.⁹

(5) While his latest appeal was pending, Mr. Thomas filed the present application citing this Court’s Criminal Rule 35(a) and seeking “Correction of Illegal Sentence.”¹⁰

(6) Criminal Rule 35(a) permits this Court to correct an illegal sentence “at any time.”¹¹ Relief under Rule 35(a) is available when, *inter alia*, the sentence imposed: exceeds the statutorily-authorized limits; 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.¹²

(7) Mr. Thomas unites with the many other sentenced inmates claiming his sentence is illegal and he is due resentencing under the United States Supreme Court decision in *Erlinger v. United States*.¹³ But as is the

Mr. Thomas’s postconviction petition).

⁹ *Thomas v. State*, 2026 WL 1076538 (Del. Apr. 21, 2026) (affirmance of denial of postconviction relief); D.I. 187.

¹⁰ D.I. 183.

¹¹ Super. Ct. Crim. R. 35(a) (“*Correction of sentence*. -- The court may correct an illegal sentence at any time . . .”).

¹² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

¹³ See *State v. Deputy*, __ A.3d __, __, 2026 WL 1883839, at *1 (Del. Super. Ct. June 29, 2026) (observing that “scores of incarcerated Delaware defendants who had previously been convicted and sentenced under statutes incorporating recidivist enhancements began incanting *Erlinger* [*v. United States* 602 U.S. 821 (2024)] as a basis for relief from their convictions or sentences”); see also *State v. Morrison*, 2025 WL 1431931, at *2 (Del. Super. Ct. May 19, 2025) (citing *State v. Archy*, 2025 WL 1330215, at *2 (Del. Super. Ct. May 7, 2025) which made note of the “blizzard of *pro se* pleadings from inmates seeking relief” through resort to *Erlinger*).

case with many of those others, *Erlinger* is of no assistance to him because neither of his two sentences was—via some statutory mechanism—enhanced in any way on either the minimum end or at the maximum end.¹⁴ More simply put, *Erlinger* does not apply in this case because there was no enhancement of either Mr. Thomas’s first-degree murder or his PFDCF sentence based on prior conviction history.¹⁵

(8) There just is no demonstrable illegality in the substance of Mr. Thomas’s sentence. Thus, he is due no relief under this Court’s Criminal Rule 35(a); his motion thereunder is therefore **DENIED**. And because he is manifestly ineligible for Rule 35(a) relief, the Court need not appoint Mr. Thomas counsel to engage some vain effort to pursue it.¹⁶

SO ORDERED,

/s/ *Paul R. Wallace*

Paul R. Wallace, Judge

cc: Mr. Kashiem Thomas, *pro se*
Carolyn S. Hake, Deputy Attorney General

¹⁴ See *Deputy*, 2026 WL 1883839, at *1 n.7 (noting that “as oft happens in like circumstances, there have been a raft of filings spouting *Erlinger* where *Erlinger* is wholly inapplicable because there had been no increase in the statutorily-prescribed range of penalties in the inmates’ cases”) (listing cases);

¹⁵ See *Phillips v. State*, 2025 WL 1693652, at *2 (Del. June 16, 2025) (explaining that that *Erlinger* did not apply to a similar life-plus sentence imposed for first-degree murder and related charges because the inmate’s sentence was not subject to enhancement in any way based on his prior criminal conduct); *Johnson v. State*, 2025 WL 2452107, at *2 (Del. Aug. 25, 2025).

¹⁶ See *Morrison*, 2025 WL 1431931, at *2 n.17 (collecting cases).