

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KRISTOPHER GUIFF,	§
	§
Defendant Below-	§ No. 404, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. VN92-05-0145-05
Plaintiff Below-	§
Appellee.	§

Submitted: December 29, 1999

Decided: March 3, 2000

Before **VEASEY**, Chief Justice, **HARTNETT** and **BERGER**, Justices

ORDER

This 3rd day of March 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kristopher Guiff (“Guiff”), filed this appeal from an order of the Superior Court denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a) (“Rule 35(a”).

We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Guiff claims his sentence is illegal because the condition that he remain incarcerated at Level V pending space availability at

Level IV violates his right to be released on his “conditional release date,”¹ requires him to start a second sentence prior to completing the first² and results in the Department of Correction’s unauthorized application of his good time credits to the Level IV portion of his sentence instead of to the prior Level V portion.

(3) In January 1993, Guiff pleaded guilty to assault in the second degree. He was sentenced to 6 years incarceration at Level V, with credit for time served, to be suspended after 2 years for 4 years at Level IV, which was in turn to be suspended after 6 months for 3½ years at Level III. After serving his term of incarceration, Guiff violated his probation five times. For the fifth violation, he was sentenced to 2 years and 6 months at Level V, to be suspended after 2 years for 6 months at Level IV work release. He was ordered held at Level V pending space availability at Level IV. Guiff did not file a direct appeal of his conviction or sentence.

(4) “Relief under Rule 35(a) is available ‘when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy

¹Citing *Snyder v. Andrews*, Del. Supr., 708 A.2d 237 (1998); 11 Del. C. § 4348.

²Citing *Hall v. Carr*, Del. Supr., 692 A.2d 888 (1997).

Clause’”³ “A sentence is also illegal if it ‘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 the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.’”⁴

(5) There is no merit to Guiff’s claim. Guiff does not dispute that the sentence imposed by the Superior Court for his fifth violation of probation was within the previously suspended prison term.⁵ He also does not dispute that the Superior Court’s condition of continued incarceration at Level V pending space availability at Level IV does not exceed any penalty the Superior Court was authorized to impose.⁶ As such, Guiff does not dispute that his sentence was legal. His fundamental complaint relates to the Department of Correction’s method of applying good time credits to his sentence. Because Guiff does not dispute the legality of his sentence, he is not entitled to relief pursuant to Rule 35(a).

³*Brittingham v. State*, Del. Supr., 705 A.2d 577, 578 (1998) (quoting *United States v. Pavlico*, 961 F. 2d 440, 443 (4th Cir. 1992)).

⁴*Id.* (quoting *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir. 1997)).

⁵*Ingram v. State*, Del. Supr., 567 A.2d 868, 869 (1989).

⁶*Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice