

SUPREME COURT OF THE STATE OF DELAWARE

Henry v. State

No. 111, 2019 · No. No. 111, 2019 · Decided July 16, 2019

SUMMARY

The Delaware Supreme Court affirmed the Superior Court's denial of Patrick Henry's motion to change or correct his sentences. The Court held that Henry's consecutive sentences were not illegal because they complied with the law in effect when imposed, and that his ineffective-assistance claim was not properly raised through a motion to correct an illegal sentence. The Court granted the State's motion to affirm.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Jr., Chief Justice; Karen L. Valihura, Justice; James T. Vaughn, Jr., Justice
JURISDICTION	Delaware
DECIDED	July 16, 2019
DOCKET	No. 111, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Patrick Henry appealed the Superior Court's denial of his motion to change or correct his sentences. The Delaware Supreme Court granted the State's motion to affirm and affirmed the Superior Court's judgment.
STANDARD OF REVIEW	The Court granted the State's motion to affirm because it was manifest on the face of Henry's opening brief that the appeal was without merit. Claims not raised in the body of the opening brief were deemed waived under Supreme Court Rule 14(b)(vi)(A)(3).
PRECEDENTIAL VALUE	Unpublished Delaware Supreme Court order; precedential status is not stated in the opinion text.
PARTIES	Patrick Henry v. State of Delaware

TOPICS

- sentencing
- sentence modification
- criminal procedure
- post-conviction relief
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

sentencing

post-conviction relief

appellate practice

QUESTIONS PRESENTED

1. Whether Henry's consecutive sentences were illegal under Superior Court Criminal Rule 35(a) because they were imposed under the version of 11 Del. C. § 3901(d) requiring consecutive sentences.
2. Whether the sentences lacked the statutorily required period of lower-level custodial supervision for transition back into society.
3. Whether an ineffective-assistance-of-counsel claim could be raised through a Rule 35(a) motion rather than a motion for postconviction relief under Rule 61.
4. Whether Henry waived the claims concerning 11 Del. C. § 3901 by failing to raise them in the body of his opening brief.

HOLDINGS

1. Henry waived the § 3901 claims he had made in the Superior Court because he did not raise them in the body of his opening brief.
2. Henry's consecutive sentences were not illegal because, when they were imposed in 2007, 11 Del. C. § 3901(d) required sentences of confinement to run consecutively, and the convictions arose from two separate incidents.
3. Henry's sentences included the statutorily required period of at least six months of Level IV, III, or II supervision to facilitate his transition back into society.
4. An ineffective-assistance-of-counsel claim must be brought through a motion for postconviction relief under Superior Court Criminal Rule 61, not through a Rule 35(a) motion to correct an illegal sentence.

KEY QUOTATIONS

“A sentence is illegal under Rule 35(a) if it exceeds the statutory limits, violates double jeopardy, is ambiguous or internally contradictory, or is not authorized by the judgment of conviction.” (¶ 5)

“No sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant.” (n. 4)

FACTUAL BACKGROUND

Henry was convicted by Superior Court juries in March 2007 of cocaine trafficking, possession with intent to deliver cocaine, and drug-paraphernalia offenses arising from two separate incidents in September and October 2006. The Superior Court imposed consecutive Level V sentences totaling thirty-nine years, suspended after twenty-seven years for eighteen months of Level III probation. Henry later sought to alter the consecutive structure of the sentences, asserted that the sentences lacked adequate step-down provisions, and alleged ineffective assistance of trial and postconviction counsel.

PROCEDURAL HISTORY

Henry was convicted in two Superior Court criminal cases and sentenced in 2007 to an aggregate thirty-nine years of Level V incarceration, suspended after twenty-seven years for eighteen months of Level III probation. The Delaware Supreme Court affirmed the convictions and sentences on consolidated appeal in 2008. After the Superior Court denied a prior motion seeking concurrent sentences in 2016, Henry filed a February 2019 motion titled "Motion Amend § 3901 Fixing Term of Imprisonment," which the Superior Court denied on the ground that 11 Del. C. § 3901 was not retroactive. The Supreme Court affirmed under its motion-to-affirm procedure.

DISPOSITION

affirmed

CASES CITED

- Henry v. State, 2008 WL 623208 (Del. Mar. 7, 2008)
- Henry v. State, 2016 WL 4091235 (Del. July 18, 2016)
- Brittingham v. State, 705 A.2d 577, 578 (Del. 1998)
- Fountain v. State, 139 A.3d 837, 843 (Del. 2016)
- Cochran v. State, 2007 WL 2812870, at *2 (Del. Sept. 28, 2007)

OPINION

Henry v. State

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK HENRY, §

§ Defendant Below, § No. 111, 2019 Appellant, § § Court Below—Superior Court v. § of the State of Delaware §

STATE OF DELAWARE, § Cr. ID Nos. 0609021733,

§ 0610025087, 0506024010 (S) Plaintiff Below, § Appellee. § Submitted: May 3, 2019 Decided: July 16, 2019 Before STRINE, Chief Justice; VALIHURA and TRAYNOR, Justices.

ORDER

After consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Patrick Henry, filed this appeal from the Superior Court's denial of his motion to change his sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Henry's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, on March 19, 2007, a Superior Court jury found Henry guilty of Trafficking Cocaine, Possession with Intent to Deliver Cocaine, and four counts of Possession of Drug Paraphernalia in Criminal ID No. 0609021733. These charges arose from the discovery of Henry with cocaine on September 29, 2006. On March 28, 2007, a Superior Court

jury found Henry guilty of Possession with Intent to Deliver Cocaine and Possession of Drug Paraphernalia in Criminal ID No. 0610025087. These charges arose from the discovery of Henry with cocaine on October 25, 2006. On May 11, 2007, the Superior Court sentenced Henry in both cases to a total of thirty-nine years of Level V incarceration, suspended after twenty- seven years for eighteen months of Level III probation. On a consolidated appeal in both cases, the Court affirmed the Superior Court's judgment.¹

(3) On February 4, 2019, Henry filed a document titled "Motion Amend § 3901 Fixing Term of Imprisonment." The Superior Court denied the motion, holding 11 Del. C. § 3901 is not retroactive. This appeal followed.

(4) Henry argues, as he did below, that the Superior Court imposed too many consecutive sentences, the sentences did not include any step-down provisions to ensure his successful reintegration into society, and his trial counsel and postconviction counsel were ineffective. Henry does not raise the § 3901 claims he made in the Superior Court and has therefore waived those claims. ² His remaining claims are without merit. ¹ Henry v. State, 2008 WL 623208 (Del. Mar. 7, 2008). ² Supr. Ct. R. 14(b)(vi)(A)(3) ("The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal."). In 2016, this Court affirmed the Superior Court's denial of Henry's previous motion for his sentences to be made concurrent under § 3901(d). Henry v. State, 2016 WL 4091235 (Del. July 18, 2016). ²

(5) We construe Henry's motion in the Superior Court as a motion for correction of illegal sentence under Superior Court Criminal Rule 35(a). A sentence is illegal under Rule 35(a) if it exceeds the statutory limits, violates double jeopardy, is ambiguous or internally contradictory, or is not authorized by the judgment of conviction.³ At the time Henry was sentenced in 2007, his Level V sentences had to run consecutively.⁴ His convictions arose from two separate incidents in which he was found with drugs. Henry's consecutive sentences are not illegal.

(6) Contrary to Henry's contentions, his sentences include the statutorily required time (at least six months of Level IV, III, or II supervision) to facilitate his transition back into society.⁵ Finally, the proper procedural vehicle for Henry's ineffective assistance of counsel claim was a motion for postconviction relief under Rule 61, not a motion for correction of sentence under Rule 35.⁶ ³ Brittingham v. State, 705 A.2d 577, 578 (Del. 1998). ⁴ 11 Del. C. § 3901(d) (1995) ("No sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant."). Effective July 9, 2014, § 3901(d) was amended to give courts the discretion, with certain exceptions, to impose concurrent or consecutive sentences of confinement. Amended § 3901(d) does not apply to sentences imposed before July 9, 2014. Fountain v. State, 139 A.3d 837, 843 (Del. 2016). ⁵ 11 Del. C. § 4204(l) ("[W]henver a court imposes a period of incarceration at Level V custody for 1 or more offenses that totals 1 year or more, then that court

must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months to facilitate the transition of the individual back into society.”).
6 See, e.g., *Cochran v. State*, 2007 WL 2812870, at *2 (Del. Sept. 28, 2007) (affirming the Superior Court’s denial of motion for correction of illegal sentence where the defendant argued his counsel was ineffective). We note that there is no indication in Henry’s motion or opening brief that he can overcome the procedural hurdles of Rule 61. Because Henry previously filed an unsuccessful motion for postconviction relief under Rule 61, he would have to satisfy Rule 62(d) (2) and plead with particularity the existence of new evidence that creates a strong inference that he is actually 3 NOW, THEREFORE, IT IS ORDERED that motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ Leo E. Strine, Jr. Chief Justice innocent or a new rule of constitutional law that is retroactive, applies to his case, and renders his conviction invalid. 4