

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	
	)	I.D. No. 1107001573
	)	
GABRIEL WALLACE,	)	
	)	
Defendant.	)	

Submitted: September 5, 2025

Decided: October 30, 2025

Upon Defendant's Motion for Correction of Illegal Sentence
DENIED.

Upon Defendant's Motion for Appointment of Counsel
MOOT.

ORDER

Gabriel Wallace, *pro se*, Smyrna, DE.

Andrew J. Vella, Chief of Appeals, DEPARTMENT OF JUSTICE, 820 N. French St., Wilmington, Delaware, Attorney for the State of Delaware.

WHARTON, J.

This 30th day of October, 2025, upon consideration of Defendant Gabriel Wallace’s (“Wallace”) Motions for Correction of Illegal Sentence,¹ and for Appointment of Counsel,² and the record in this matter, it appears to the Court that:

1. Wallace pled guilty on January 23, 2011 to Possession of a Firearm During the Commission of a Felony.³ On April 20, 2011, this Court declared him an habitual offender pursuant to 11 *Del. C.* § 4214(a) and sentenced him to 25 years of incarceration.⁴ Wallace did not appeal, but, instead filed unsuccessful motions in this Court. The first was a Motion for Modification of Sentence.⁵ Next was a Motion for Postconviction Relief and Appointment of Counsel.⁶ That latter motion was withdrawn.⁷ These motions followed.

2. Wallace now moves for correction of an illegal sentence. In this motion, Wallace challenges the Court’s determination of his eligibility to be sentenced as a habitual offender.⁸ Citing *Erlinger v. United States*,⁹ he argues that his sentence “was

¹ D.I. 55.

² D.I. 56.

³ D.I. 26.

⁴ D.I. 31

⁵ D.I. 33.

⁶ D.I. 35, 46.

⁷ D.I. 51.

⁸ D.I. 55.

⁹ 602 U.S. 821 (2024) (quoting *Alleyne v United States*, 570 U.S. 99, 111-113 (2013)).

enhanced based on prior convictions that were not proven to a jury beyond a reasonable doubt.”¹⁰

3. Pursuant to Criminal Rule 35(a), the Court may correct an illegal sentence at any time.¹¹ A sentence is illegal if it 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 the substance of the sentence, or is a sentence that the judgment of conviction did not authorize.¹² The Court may correct a sentence imposed in an illegal manner within the time provided for the reduction of sentence which is 90 days of the imposition of sentence.¹³

4. Here, the Court need not determine whether the motion more properly is one to correct an illegal sentence, and thus cognizable, or a time barred motion to correct a sentence illegally imposed. Nor need the Court determine *Erlinger's* applicability to Delaware's habitual offender sentencing statute. The Court need only consult the plea agreement signed by Wallace to determine he is not entitled to relief. The plea agreement reads:

The defendant agrees that he has the following separate and distinct convictions: (1) Burglary 2nd in 2004; (2) Burglary 2nd in 2002; (3) Burglary 3rd in 2009; (4) Theft in 1996. The defendant does acknowledge and stipulate that

¹⁴ D.I. 55.

¹¹ Super. Ct. Crim. R. 35(a).

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

¹³ Super. Ct. Crim. R. 35(a) and (b).

he was previously declared an habitual offender in ID# 0808013274 and sentenced as same on Jan 12, 2009.¹⁴

5. Wallace admitted his status as an habitual offender in the plea agreement. Just as Wallace waived his right to have a jury determine his guilt beyond a reasonable doubt when he entered his guilty plea, so too did he waive his right to have a jury determine his status as a habitual offender.

Therefore, Defendant Gabriel Wallace's Motion to Correct Illegal Sentence **DENIED**. His request for appointment of counsel is **MOOT**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton
Ferris W. Wharton, J.

¹⁴ D.I. 26.