

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMMEYIN A. JOHNSON,	§
	§
Defendant Below-	§ No. 253, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9711012428
Plaintiff Below-	§
Appellee.	§

Submitted: October 26, 2007

Decided: January 9, 2008

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 9th day of January 2008, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Dammeyin Johnson, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Johnson's opening brief that his appeal is without merit. We conclude that the Superior Court erred in this case. Accordingly, we reverse the Superior Court's judgment and remand the matter for further consideration.

(2) The record reflects that Johnson pled guilty in July 1998 to one count of trafficking in cocaine. The Superior Court deferred sentencing and remanded Johnson to the custody of the Department of Correction for completion of the Boot Camp Diversion Program. At the time of Johnson's offense in 1998, the Boot Camp Diversion Program required a defendant to successfully complete at least six months at a boot camp facility followed by Level IV and/or Level III supervision for two and a half years.¹ In 2005, the General Assembly amended the Boot Camp statute to reduce the period of follow-up supervision to one and a half years.² In April 2007, Johnson, who is serving a lengthy prison sentence following his conviction for second degree unlawful intercourse,³ filed a motion requesting the Superior Court to reduce the probationary period associated with his 1998 diversion into the Boot Camp program. The Superior Court summarily denied the motion on the ground that it was not timely filed under Superior Court Criminal Rule 35(b) and because the sentence was appropriate "for all the reasons stated at the time of sentencing."

(3) As Johnson points out in his opening brief on appeal, the General Assembly, in amending the Boot Camp statute in 2005, specifically

¹ 11 Del. C. § 6712(d)(1) (Supp. 1998).

² See 75 Del. Laws ch. 167, § 1 (July 12, 2005).

³ *Johnson v. State*, 753 A.2d 438 (Del. 2000).

provided that any person currently in the first offender's program could petition to have their period of follow-up supervision reduced to a term of one and a half years.⁴ Furthermore, Superior Court Criminal Rule 35(b) specifically provides that the Superior Court may reduce a defendant's term of probation "at any time."⁵ Accordingly, we find the Superior Court erred in denying Johnson's motion in this case as being untimely filed. Moreover, because there is no transcript of the original sentencing hearing, this Court is unable to review the Superior Court's determination that Johnson's original sentence was appropriate for the reasons stated at sentencing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED. This matter is hereby REMANDED to the Superior Court for further consideration of Johnson's sentence reduction motion consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁴ 75 Del. Laws ch. 167, § 3 (July 12, 2005).

⁵ Del. Super. Ct. Crim. R. 35(b) (2007).