

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWIN SCARBOROUGH,	§
	§
Defendant Below-	§ Nos. 501, 2007 and 532, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID Nos. 0411008400 and
Plaintiff Below-	§ 0505000145
Appellee.	§

Submitted: November 5, 2007

Decided: January 22, 2008

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

**ORDER**

This 22<sup>nd</sup> day of January 2008, upon consideration of the opening briefs and the respective motions to affirm filed in these appeals, it appears to the Court that:

(1) The appellant, Edwin Scarborough, filed these related appeals from orders of the Superior Court dated September 4, 2007 and September 17, 2007, respectively. The September 4 order denied Scarborough's motion for modification of sentence, while the September 17 order denied his motion for correction of illegal sentence. The arguments Scarborough raised in both motions were consistent. The State has filed motions to affirm both judgments below on the ground that it is manifest on the face of both

opening briefs that Scarborough's appeals are without merit. In the interest of judicial economy, the Court has consolidated both appeals for decision. After careful consideration, we find that the judgments below should be affirmed.

(2) The record reflects that, in September 2005, Scarborough pled guilty, pursuant to two separate indictments, to one count each of maintaining a vehicle for keeping controlled substances, tampering with physical evidence, and resisting arrest. After denying Scarborough's motion to withdraw his guilty plea,<sup>1</sup> the Superior Court sentenced Scarborough on May 26, 2006 to two years at Level 5 imprisonment on the maintaining a vehicle charge, to two years at Level 5 imprisonment suspended for six months at Level 4 home confinement followed by one year at Level 3 probation on the tampering charge, and to one year at Level 5 imprisonment suspended for one concurrent year at Level 3 probation on the resisting arrest charge.

(3) In July 2006, Scarborough filed a motion requesting the Superior Court to modify the sentence imposed on the maintaining a vehicle

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<sup>1</sup> On April 26, 2007, this Court's interlocutory opinion affirmed the Superior Court's denial of Scarborough's motion to withdraw his plea but remanded the matter to the Superior Court for further proceedings to consider the content of an oral side agreement between Scarborough and the State affecting Scarborough's status as an habitual offender. *See Scarborough v. State*, \_\_ A.2d \_\_, 2007 WL 1223911 (Del. Apr. 26, 2007). That appeal remains pending before the Court.

charge to reduce the two-year term at Level 5 to one year at Level 5 followed by one year at Level 4 Crest. The Superior Court declined Scarborough's request to modify his sentence for maintaining a vehicle and instead modified Scarborough's sentence on the tampering charge to provide for two years at Level 5 imprisonment suspended for one year at Level 4 Crest, with the balance of that term to be suspended upon successful completion of the Crest Program for six months at Level 3 Crest Aftercare followed by six months at Level 3 probation. Scarborough did not appeal from that order. Instead, he filed separate motions seeking modification or correction of his sentence. The Superior Court denied those motions, and these appeals followed.

(4) The State contends that the Superior Court's denial of Scarborough's motions should be affirmed because the modified sentence is not illegal and because the motion to modify was not timely filed. We agree. The Superior Court's modification of Scarborough's sentence on the tampering charge did not result in an increase in Scarborough's sentence. The original two-year sentence remained suspended in its entirety, although the trial court reconfigured the suspended sentence to provide for drug treatment instead of home confinement. This reconfiguration was not

tantamount to an increase in his sentence and, thus, was not illegal.<sup>2</sup> Accordingly, the Superior Court did not err in denying Scarborough's motions to modify or correct his sentence. Moreover, because Scarborough's sentence modification motion was filed more than a year after the modified sentencing order was issued, we find no error in the Superior Court's denial of Scarborough's motion to modify on the independent ground that the motion was untimely.<sup>3</sup>

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>2</sup> See *Manis v. State*, 2002 WL 1058139 (Del. May 22, 2002).

<sup>3</sup> See *Reid v. State*, 2007 WL 3044438 (Del. Oct. 19, 2007).