

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY VALENTINE,	§	
	§	No. 562, 2014
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 0604010492
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 29, 2014  
Decided: December 31, 2014

Before **STRINE**, Chief Justice, **RIDGELY** and **VALIHURA**, Justices.

**ORDER**

This 31<sup>st</sup> day of December 2014, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Anthony Valentine, filed this appeal from the Superior Court’s September 10, 2014 denial of his second motion for modification of sentence under Superior Court Criminal Rule 35(b) (“Rule 35(b)"). The appellee, State of Delaware (“State”), has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

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<sup>1</sup> Del. Supr. Ct. R. 25(a).

(2) In December 2008, Valentine was tried before a Superior Court jury and convicted of two counts of Robbery in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony, and one count of Assault in the Second Degree and Conspiracy in the Second Degree. In a bench trial immediately following the jury verdict, Valentine was convicted of Possession of a Deadly Weapon by a Person Prohibited. On February 6, 2009, the Superior Court sentenced Valentine to an aggregate of twenty-five years at Level V suspended after twelve years for decreasing levels of supervision. As conditions of the sentence, Valentine was required to undergo a mental health evaluation and a substance abuse evaluation and follow any recommendations for treatment. On direct appeal, this Court affirmed Valentine's convictions.<sup>2</sup>

(3) In August 2010, Valentine filed a timely motion for postconviction relief under Superior Court Criminal Rule 61. The Superior Court denied the motion after concluding that Valentine's claims were either procedurally barred or without merit.<sup>3</sup> Valentine did not appeal.

(4) In April 2009, while his direct appeal was pending, Valentine filed a "motion for modification of sentence instruction" under Rule 35(b). Valentine sought a sentence modification alleging "rehabilitative achievement" and his need

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<sup>2</sup> *Valentine v. State*, 2009 WL 2415853 (Del. Aug. 7, 2009).

<sup>3</sup> *State v. Valentine*, 2011 WL 378690 (Del. Super. Jan. 31, 2011).

for mental health and substance abuse treatment. The Superior Court denied the motion after concluding that the sentence was appropriate, and that Valentine had not provided information warranting a modification of sentence.

(5) On July 10, 2014, Valentine filed a “motion for behavioral and medical reduction” seeking a reduction of sentence under Rule 35(b). Valentine sought a sentence reduction alleging that he was in need of treatment for an eye infection that had gone untreated for the past four years.

(6) When a Rule 35(b) motion is filed more than ninety days after the sentence is imposed, the Superior Court will consider a sentence reduction or modification “only in extraordinary circumstances” or under title 11, section 4217 of the Delaware Code.<sup>4</sup> Section 4217 in pertinent part permits a sentence modification if the Department of Correction certifies that the defendant has a serious medical illness and that the defendant’s release shall not constitute a substantial risk to the community or to the defendant.<sup>5</sup>

(7) By order dated September 10, 2014, the Superior Court summarily denied Valentine’s Rule 35(b) motion for reduction of sentence as time-barred and for Valentine’s failure to demonstrate any cause for relief. This appeal followed.

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<sup>4</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>5</sup> 11 Del. C. § 4217(b), (c).

(8) On appeal, Valentine argues that the Superior Court’s summary denial of his Rule 35(b) motion was an abuse of discretion. Valentine contends that the Department of Correction’s alleged failure to provide reasonable medical care for his eye infection establishes the requisite “extraordinary circumstances” to avoid the ninety-day time limitation of Rule 35(b). In support of his appeal, Valentine cites to the Superior Court’s 2003 decision in *State v. DeRoche*,<sup>6</sup> wherein the court modified a sentence after determining that the defendant was not given adequate medical care under title 11, section 6536 of the Delaware Code.<sup>7</sup>

(9) Having carefully considered the parties’ positions on appeal, the Court concludes that Valentine’s claims are without merit. Other than his summary allegation of an untreated eye infection, and unlike the defendant in *State v. DeRoche*, Valentine has not offered, and the Superior Court record does not reflect, any indication that he is not receiving adequate medical care. In the absence of

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<sup>6</sup> *State v. DeRoche*, 2003 WL 22293654 (Del. Super. Aug. 29, 2003).

<sup>7</sup> 11 Del. C. § 6536(a) provides:

The Department [of Correction] shall promulgate reasonable standards, and shall establish reasonable health, medical and dental services, for each institution, including preventive, diagnostic and therapeutic measures on both an out-patient and hospital basis for all types of patients. The nature and extent of such medical and dental services shall be determined by the Commissioner of Correction in consultation with the Bureau Chief of Correctional Healthcare Services. The Department may authorize, under regulations, inmates to be taken, with or without guard, to a medical institution or facility outside the institution.

any indication that he is not receiving adequate medical care, Valentine’s medical condition as summarily alleged does not constitute “extraordinary circumstances” warranting a reduction of sentence. Accordingly, we find no abuse of discretion in the Superior Court’s summary denial of Valentine’s untimely and repetitive motion under Rule 35(b).<sup>8</sup>

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Karen L. Valihura  
Justice

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<sup>8</sup> *DeJesus v. State*, 2014 WL 2609528 (Del. June 10, 2014); *Railford v. State*, 2014 WL 44031 (Del. Jan. 2, 2014); *Hubbard v. State*, 2011 WL 5009772 (Del. Oct. 20, 2011).