

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRYL D. COVERDALE,	§
	§
Defendant Below-	§ No. 179, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. VN95-03-2042-02
Plaintiff Below-	§ VN95-01-1018-01
Appellee.	§

Submitted: August 31, 2000
Decided: October 23, 2000

Before **WALSH, HOLLAND** and **STEELE**, Justices

ORDER

This 23rd day of October 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Darryl D. Coverdale, filed an appeal from an order of the Superior Court denying his motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b).¹ We find no merit to the appeal. Accordingly, we AFFIRM.

¹Coverdale also invokes 11 Del. C. § 4217 as the basis for his motion. That statute governs applications by the Department of Correction for modification of sentences, however, and does not apply to this case.

(2) In this appeal, Coverdale claims his sentence should be changed from Level V incarceration to Level IV work release because he was the victim of entrapment,² he did not commit a violent crime and his family is suffering hardship because of his prison sentence.

(3) On January 23, 1998, Coverdale was convicted of probation violations in connection with prior drug and felony theft convictions. He was sentenced to a total of 2-½ years incarceration at Level V, to be suspended for 18 months at Level IV work release upon successful completion of the Key or New Hope Program, to be suspended after 7 months for 11 months at Level III.

(4) Coverdale did not appeal from his convictions and sentences, but filed a petition for a writ of mandamus in this Court and a motion for postconviction relief in the Superior Court. This Court dismissed Coverdale's petition for a writ of mandamus³ and affirmed the Superior Court's denial of his motion for postconviction relief.⁴ In July 1998, Coverdale also filed a motion for modification of sentence, which was

²Coverdale withdraws this contention in his reply brief.

³*In re Coverdale*, Del. Supr., No. 125, 1998, Hartnett, J., 1998 WL 188568 (Apr. 7, 1998) (ORDER).

⁴*Coverdale v. State*, Del. Supr., No. 188, 1998, Hartnett, J., 1998 WL 985330 (Nov. 12, 1998) (ORDER).

denied by the Superior Court. On January 26, 2000, Coverdale filed the instant motion for modification of sentence, which on April 3, 2000 the Superior Court denied as repetitive.

(5) Coverdale's latest motion for modification of sentence was correctly denied by the Superior Court as repetitive.⁵ In addition, the motion was untimely because it was filed more than 90 days following the imposition of sentence and a review of the record reveals no "extraordinary circumstances" that would justify consideration of the motion beyond the 90-day period.⁶

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

Randy J. Holland
Justice

⁵Super. Ct. Crim. R. 35(b).

⁶*Id.*