

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN O. HICKMAN,	§ No. 447, 2003
	§
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr.A. No. S99-09-0097
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: September 26, 2003
Decided: November 10, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This tenth day of November 2003, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Steven O. Hickman, appeals from the Superior Court’s denial of his motion to modify his sentence pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Hickman’s opening brief that the appeal is without merit.¹

¹SUPR. CT. R. 25(a).

(2) In April 2000, Hickman pleaded guilty to Delivery of Cocaine Within 1,000 Feet of a School. He was sentenced to fifteen years incarceration at Level V, to be suspended after five years and successful completion of the Key Program for nine months at the Level IV Residential Substance Abuse Treatment Program, to be followed by five years at Level III probation.

(3) In February 2002, Hickman filed a motion for sentence modification requesting that the remainder of his Level V time be suspended so that he might begin serving the Level IV portion of his sentence. The Superior Court denied the motion. Hickman did not file an appeal. In March 2003, Hickman again moved for sentence modification requesting release from the Key Program after only three more months so that he might begin serving the Level III portion of his sentence. The Superior Court also denied this motion. Again, Hickman did not file an appeal.

(4) In June 2003 following a disciplinary hearing, Hickman was terminated from the Key Program on the ground of sexual misconduct.² He once more moved for sentence modification, this time on the ground that he should not

²The record indicates that Hickman showed a sexually explicit letter to a female correctional officer.

have to re-enter the Key Program as a condition of beginning Level IV treatment because he was terminated unfairly from the program. The Superior Court denied Hickman's motion and he filed the instant appeal.

(5) Under Superior Court Criminal Rule 35(b), the Superior Court may not consider repetitive requests for relief and may consider an application for relief made more than ninety days after the imposition of sentence only in "extraordinary circumstances."³ This Court reviews the Superior Court's denial of a motion for sentence modification under Rule 35(b) for abuse of discretion.⁴

(6) Because Hickman's motion was filed well beyond the ninety-day limit mandated by the Rule, he was required to demonstrate "extraordinary circumstances" in order for the Superior Court to consider the motion. The record reflects that Hickman gave a sexually explicit letter to a female correctional officer, was found to have engaged in sexual misconduct, was sentenced to confinement and, for that reason, was unable to complete the Key Program.⁵ As the Superior Court judge pointed out to Hickman in a letter dated August 19, 2003, the completion of a term of 5 years at Level V and successful completion of the Key Program were both express conditions of his release to Level IV under the

³SUPER. CT. CRIM. R. 35(b).

⁴*Shy v. State*, 246 A.2d 926, 927 (Del. 1968).

⁵The Department of Corrections deemed Hickman's confinement to constitute a "refusal" to participate in the Key Program.

terms of his original sentence. Accordingly, the Superior Court properly decided to deny Hickman's motion.

(7) It is manifest on the face of Hickman's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice