

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS MORGAN,	§
	§
Defendant Below-	§ No. 94, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 92S05279DI
Plaintiff Below-	§
Appellee.	§

Submitted: April 8, 2009
Decided: May 11, 2009

Before **HOLLAND, BERGER,** and **JACOBS,** Justices.

ORDER

This 11th day of May 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Thomas Morgan, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Morgan's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Morgan was convicted by a Superior Court jury in 1993 of two counts of first degree unlawful sexual intercourse and related offenses. The Superior Court sentenced him to thirty-two years at

Level V imprisonment followed by four years at decreasing levels of supervision. This Court affirmed Morgan's convictions and sentence on direct appeal.¹ Morgan filed several unsuccessful motions seeking postconviction relief. On February 9, 2009, Morgan filed a motion for sentence modification, contending that his efforts at education and rehabilitation while incarcerated constituted extraordinary circumstances warranting a reduction in his sentence. The Superior Court denied Morgan's motion as being untimely under Superior Court Criminal Rule 35(b).² This appeal followed.

(3) In his opening brief, Morgan argues that he filed a timely motion for sentence modification in 1994, which the Superior Court never addressed because his case was on appeal at the time. Morgan argues that, because he filed a timely motion in 1994, this should have preserved his right to file a later motion for sentence modification. We disagree. First, the motion Morgan filed on January 18, 1994 was *not* filed within 90 days of his October 15, 1993 sentencing date. Moreover, this Court has held that participation in educational and rehabilitative programs, while commendable, is not in and of

¹ *Morgan v. State*, 1994 WL 202272 (Del. May 5, 1994).

² Delaware Superior Court Criminal Rule 35(b) provides that the Superior Court may reduce a sentence upon motion made within 90 days of sentencing. The rule further provides that the court will only consider a motion filed beyond the 90 day limitations period if there are extraordinary circumstances or if the motion is filed by the Department of Correction pursuant to 11 Del. C. § 4217.

itself sufficient to establish extraordinary circumstances warranting review of an untimely motion for sentence modification.³ Accordingly, we find no error in the Superior Court's denial of Morgan's motion.

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

BY THE COURT:

Carolyn Berger
Justice

³ *Triplett v. State*, 2008 WL 802284 (Del. Mar. 27, 2008).