

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD L. WOODS,	§
	§
Defendant Below-	§ No. 68, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID. No. 9410012388
Plaintiff Below-	§
Appellee.	§

Submitted: March 5, 2003
Decided: April 8, 2003

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

ORDER

This 8th day of April 2003, upon consideration of the appellant's opening brief on appeal and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Donald L. Woods, filed an appeal from the Superior Court's January 14, 2003 order denying his motion for modification of sentence. 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 Woods' opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In February 1995, Woods was found guilty by a Superior Court jury of Possession with Intent to Deliver Cocaine, Possession of Cocaine Within 1000 Feet of a School, Possession of Heroin, Criminal Trespass in the Third Degree and Resisting Arrest. He was sentenced to 20 years incarceration at Level V, to be suspended after 10 years for decreasing levels of probation. Woods has since filed numerous motions to reduce or modify his sentence.

(3) In this appeal, Woods claims that the Superior Court abused its discretion by denying his latest motion for sentence modification. He contends that the Superior Court improperly considered his motion under Superior Court Criminal Rule 35(b) rather than DEL. CODE ANN. tit. 11, § 4217. He further contends that he is entitled to a sentence modification under the statute because he has demonstrated “exceptional rehabilitation”¹ and “has served at least one-half of the originally imposed Level V sentence.”²

(4) Woods’ claim is without merit. Even if Woods had served half of the 20-year Level V sentence originally imposed by the Superior Court, under the statute it is within the sole discretion of the Department of Correction (the “Department”) to apply for a modification of Woods’ sentence in the first

¹DEL. CODE ANN. tit. 11, § 4217(c).

²DEL. CODE ANN. tit. 11, § 4217(f).

instance.³ The Department has not chosen to initiate the application process on Woods' behalf.⁴

(5) Because the Department has not initiated the application process, the Superior Court had no choice but to consider Woods' motion for sentence modification pursuant to Rule 35(b).⁵ There was no abuse of discretion on the part of the Superior Court in denying Woods' motion since there were no extraordinary circumstances excusing the 90-day time limit and the motion was repetitive.⁶

(6) It is manifest on the face of Woods' 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.

³DEL. CODE ANN. tit. 11, § 4217(b).

⁴If the Department decides to initiate the process, it first files an application with the Board of Parole and, if the Board of Parole recommends a sentence modification, the Department then submits the application to the Superior Court. DEL. CODE ANN. tit. 11, § 4217(d).

⁵*Ketchum v. State*, Del. Supr., No. 631, 2001, Berger, J. (June 10, 2002).

⁶SUPER. CT. CRIM. R. 35(b).

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/ Carolyn Berger
Justice