

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY W. STEVENS,	§
	§ No. 571, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0809001791
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 15, 2009
Decided: November 4, 2009

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

ORDER

This 4th day of November 2009, 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, Anthony W. Stevens, filed an appeal from the Superior Court's September 14, 2009 order denying his motion for modification of sentence pursuant to Superior Court Criminal Rule 35. The plaintiff-appellee, the State of Delaware, 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.¹ We agree and affirm.

(2) In October 2008, Stevens was indicted on charges of Attempted Felony Theft, Trespass in the Third Degree, and Escape After Conviction. In December 2008, with the assistance of counsel, Stevens pleaded guilty to the sole charge of Escape After Conviction. He was sentenced to 8 years of Level V incarceration, to be suspended after 2 years for decreasing levels of supervision.

(3) In January 2009, Stevens filed a motion for sentence modification. The Superior Court denied the motion, but noted in its order that the sentencing order could be modified for placement in the Key and Crest Programs if Stevens wished. The Superior Court docket sheet reflects that, in March and April 2009, Stevens wrote to the sentencing judge and requested that the sentencing order be modified in accordance with the judge's suggestion.²

(4) On May 1, 2009, the Superior Court modified Stevens' sentence to provide for Level IV Crest following completion of the 2-year Level V sentence, in accordance with Stevens' request. On August 13,

¹ Supr. Ct. R. 25(a).

² Stevens' first letter stated, ". . . I do desire and request the Key and Crest Program and all terms that follow. I ask respectfully that this sentence be put into effect immediately." His second letter stated, ". . . I do desire and request the modified sentence set forth by the court for the defendant."

2009, Stevens again moved to modify his sentence, this time on the ground that he no longer wanted the modification he previously had requested.

(5) Stevens has presented no evidence that the Superior Court abused its discretion by modifying his sentencing order.³ Moreover, there is no evidence that Stevens' modified sentencing order contained a sentence that exceeded the maximum limits authorized by law or was the result of vindictive or arbitrary action by the sentencing judge.⁴ As such, the judgment of the Superior Court must be affirmed.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issue presented on appeal is controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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/ Jack B. Jacobs
Justice

³ *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002).

⁴ *Mayes v. State*, 604 A.2d 839, 842-44 (Del. 1992).