

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HARRY L. SAMUEL,	§	
	§	No. 275, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 93005924DI
Appellee.	§	

Submitted: July 8, 2010  
Decided: August 17, 2010

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

**ORDER**

This 17<sup>th</sup> day of August 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm it appears to the Court that:

(1) In 1994, the appellant, Harry L. Samuel, was convicted of several counts of assault and related weapons offenses. On direct appeal, this Court merged two sets of assault convictions and remanded the case for resentencing.<sup>1</sup> On appeal from the sentence imposed after remand, the Court affirmed.<sup>2</sup>

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<sup>1</sup> *Samuel v. State*, 1996 WL 191068 (Del. Supr.).

<sup>2</sup> *Samuel v. State*, 1997 WL 317362 (Del. Supr.).

(2) In the last several years, Samuel has unsuccessfully sought state postconviction relief and federal habeas relief.<sup>3</sup> Most recently, Samuel has sought a reduction in his sentence. By order dated September 18, 2009, the Superior Court denied Samuel's motion for reduction of sentence as untimely, without "extraordinary circumstances," and because the sentence imposed was appropriate.<sup>4</sup> On appeal, this Court affirmed the Superior Court's decision.<sup>5</sup>

(3) This appeal arises from another motion for reduction of sentence filed by Samuel on April 26, 2010. By order dated April 29, 2010, the Superior Court denied the motion as untimely, repetitive, without extraordinary circumstances, and because the sentence imposed was appropriate. On May 7, 2010, Samuel filed a "rehearing/reconsideration motion" ("motion for reconsideration") asking the Superior Court to reconsider the April 29, 2010 order. By order dated May 25, 2010, the Superior Court denied Samuel's motion for reconsideration on the basis that "[n]one of the reasons given by defendant justify modification."

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<sup>3</sup> *Samuel v. Carroll*, 2004 WL 1368845 (D. Del.); *Samuel v. State*, 2006 WL 3230350 (Del. Supr.); *State v. Samuel*, 2007 WL 3288616 (Del. Supr.); *State v. Samuel*, 2008 WL 2174414 (Del. Supr.), *aff'd*, 2008 WL 5264275 (Del. Supr.).

<sup>4</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>5</sup> *Samuel v. State*, 2010 WL 424236 (Del. Supr.).

(4) On June 7, 2010, Samuel filed an appeal from the April 29, 2010 order denying his motion for reduction of sentence and the May 25, 2010 order denying his motion for reconsideration. On appeal, the State contends that the Court has no jurisdiction to consider the April 29, 2010 order and should affirm the May 25, 2010 order. The State's position is well-taken.

(5) A timely-filed motion for reargument is "the proper device for seeking reconsideration" of a trial court's findings of fact and conclusions of law.<sup>6</sup> In the Superior Court, a motion for reargument must be filed within five days<sup>7</sup> of the filing of the order that is sought to be reargued.<sup>8</sup> If a motion for reargument is untimely filed, the motion cannot be considered by the Superior Court.<sup>9</sup> Also, an untimely motion for reargument does not toll the time for filing an appeal.<sup>10</sup>

(6) In this case, it appears to the Court that Samuel's motion for reconsideration was more than five days after the filing of the order denying his motion for reduction of sentence. Therefore, the motion should not have

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<sup>6</sup> *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969). *Accord Whitfield v. State*, 2009 WL 3111680 (Del. Supr.) (characterizing motion to reconsider as motion for reargument).

<sup>7</sup> *See* Del. Super. Ct. Crim. R. 45(a) (excluding Saturdays, Sundays and legal holidays).

<sup>8</sup> Del. Super. Ct. Civ. R. 59(e); Del. Super. Ct. Crim. R. 57(d).

<sup>9</sup> *Cf. Boyer v. State*, 2007 WL 452300 (Del. Supr.) (concluding that Superior Court had no jurisdiction to consider substance of untimely motion for reargument) (citing *Preform Bldg. Components, Inc. v. Edwards*, 280 A.2d 697, 698 (Del. 1971)).

<sup>10</sup> *McDaniel v. DaimlerChrysler Corp.*, 860 A.2d 321, 323 (Del. 2004).

been considered by the Superior Court. Also, because the untimely motion for reconsideration did not toll the time for taking an appeal from the order denying the motion for reduction of sentence, Samuel's appeal filed on June 7, 2010 is untimely.

(7) Samuel's untimely appeal leaves this Court without jurisdiction to consider the April 29, 2010 denial of the motion for reduction of sentence. Also, because the motion for reconsideration was untimely filed, we must affirm its denial, albeit for reasons different than those relied upon by the Superior Court in its order of May 25, 2010.<sup>11</sup>

(8) Finally, even if the Court were to consider the merits of Samuel's motion for reduction of sentence and motion for reconsideration as the Superior Court did, we would conclude that the motions are without merit. First, Samuel contends that he was unable to timely file a motion for reduction of sentence, *i.e.*, within ninety days of sentencing, because of "medical, ineffective assistance of counsel, inadequate law library, [and] denied legal property while in MSU." Nonetheless, coming nearly fourteen years after his sentencing, neither the motion for reduction of sentence nor

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<sup>11</sup> See *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (affirming a judgment of the Superior Court on grounds different from those relied upon by the Superior Court).

the motion for reconsideration demonstrate exceptional circumstances that would justify consideration of Samuel's untimely motion.

(9) Second, this Court will not interfere with the Superior Court's refusal to modify a sentence unless it can be demonstrated that the sentence exceeded the maximum authorized by statute<sup>12</sup> or resulted from an abuse of discretion.<sup>13</sup> In this case, Samuel did not argue that the sentence exceeded the statutory authorization and has not demonstrated that the sentence imposed resulted from an abuse of discretion.<sup>14</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that State's the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>12</sup> See *Melody v. State*, 2003 WL 1747237 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992)).

<sup>13</sup> *Id.* (citing *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002)).

<sup>14</sup> See *Samuel v. State*, 1997 WL 317362 (Del. Supr.) (determining that sentence imposed was within statutory limits and was warranted based on permissible factors including multiple deadly weapons, multiple victims, excessive cruelty, the unprovoked nature of the attack, and that defendant was already being held at a Level IV custody status).