

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY KINDLE,	§
	§ No. 45, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID Nos. 9908027503;
Plaintiff Below-	§ 9912012693; 0004004115;
Appellee.	§ 0103020294; 0108016817

Submitted: September 24, 2010

Decided: December 2, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 2<sup>nd</sup> day of December 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Jeffrey Kindle, filed this appeal from the Superior Court's denial of his motion for modification of sentence. After careful review, we find no merit to Kindle's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that, on October 2, 2009, the Superior Court found Kindle in violation of his probation associated with five different criminal actions. After ordering a presentence investigation, the Superior Court sentenced Kindle to a total of twenty years at Level V incarceration, to

be suspended after serving eight years in prison for two years at decreasing levels of supervision. His probation was discharged as unimproved with respect to several of his prior sentences. The court further ordered mental health and substance abuse evaluations and required Kindle to comply with all recommendations for counseling and treatment. Kindle did not appeal from his VOP sentence.

(3) Instead, on December 14, 2009, Kindle filed a motion requesting the Superior Court to modify his VOP sentence. Kindle asserted two grounds for modification. First, he contended that the Superior Court's sentence failed to provide for "transitional re-entry treatment." Second, he argued that his VOP sentence failed to provide for mental health treatment. Kindle requested the Superior Court to modify his sentence to provide for a "treatment-oriented term of incarceration, suspended after satisfactory completion of Level 5 rehabilitative and mental health programing [sic] to be followed by a transitional step down to Level 4..." The Superior Court denied the motion, noting that Kindle had provided no additional information to warrant a modification of his VOP sentence. This appeal followed.

(4) Kindle raises six issues in his opening brief on appeal. First, he contends that his VOP sentence should be modified because the Superior

Court judge sentenced him with a closed mind. Second, he argues that the judge improperly relied upon an unqualified expert in making medical judgments with respect to his VOP sentence. Third, he asserts that his VOP sentence should be modified because the sentencing judge erred in not having a mental health evaluation performed. Fourth, Kindle argues that the VOP proceedings violated his constitutional rights because he was not permitted to obtain a mental health expert to testify on his behalf. Fifth, he asserts that this VOP sentence was excessive. Finally, he argues that his mental illness was directly related to his recidivism and was not properly addressed by the Superior Court.

(5) Kindle failed to raise any of these issues in the Superior Court on his sentence modification motion. Accordingly, his claims are barred unless consideration is warranted in the interests of justice.<sup>1</sup> We do not find consideration of these newly-raised claims to be warranted. The Superior Court's VOP sentence was well within the statutory limits.<sup>2</sup> Moreover, the Superior Court clearly considered Kindle's need for mental health treatment and specifically ordered that a mental health evaluation be performed and that all recommendations for treatment be followed. Accordingly, we find

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<sup>1</sup> Del. Supr. Ct. R. 8 (2010).

<sup>2</sup> See *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989) (holding that appellate review of a sentence generally ends upon the determination that the sentence is within legislative limits).

no abuse of the Superior Court's discretion in denying Kindle's motion for sentence modification.<sup>3</sup>

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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<sup>3</sup> *Shy v. State*, 246 A.2d 926, 927 (Del. 1968) (Supreme Court reviews the denial of a sentence modification motion for abuse of discretion).