

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KIMBERLY M. KISER,	§
	§ No. 556, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0904016803
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 25, 2010
Decided: December 17, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 17th day of December 2010, 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, Kimberly M. Kiser, filed an appeal from the Superior Court’s August 2, 2010 order denying her second motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b). 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) The record reflects that, in January 2010, Kiser pleaded guilty to Burglary in the Second Degree, Felony Theft, Theft From a Senior and 3 counts of Conspiracy in the Second Degree. The State dismissed numerous additional charges. Kiser was sentenced to 1 year at Level IV and successful completion of the Village Program, to be followed by Level IV Crest and Crest Aftercare, in turn to be followed by 5 years at Level I supervision for the purpose of restitution.²

(3) In this appeal from the Superior Court's denial of her second Rule 35(b) motion, Kiser claims that the Superior Court erred and abused its discretion when it denied her motion as untimely. She asks that the matter be remanded to the Superior Court so that the drug treatment portion of her sentence can be changed to home confinement or work release. Kiser argues that her children need her and that she cannot begin to pay restitution until she is employed.

¹ Supr. Ct. R. 25(a).

² Under Del. Code Ann. tit. 11, §4333(d)(3), the probationary time limitations of §4333(b) and (c) do not apply if the sentencing judge determines that a longer period of probation is necessary to ensure the collection of any restitution owed, provided that any such probation is served at Level I.

(4) Kiser is correct that a motion for reduction or modification of partial confinement may be made at any time.³ As such, the Superior Court incorrectly ruled that Kiser's motion was untimely. Nevertheless, the Superior Court also properly denied Kiser's motion on the merits. Appellate review of a sentence generally ends upon a finding that the sentence is within the statutorily-authorized limits.⁴ Kiser does not dispute that her sentence is within the statutorily-authorized limits. Moreover, the Superior Court acted within its discretion when it determined that the reasons cited by Kiser did not constitute valid grounds for modifying her sentence.

(5) It is manifest on the face of the 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, 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/ Myron T. Steele
Chief Justice

³ Super. Ct. R. 35(b); *Iverson v. State*, Del. Supr., No. 216, 2009, Jacobs, J. (July 16, 2009).

⁴ *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).