

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRESS G. ROBINSON,	§
	§ No. 264, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0805002718
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 11, 2011
Decided: August 15, 2011

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

ORDER

This 15th day of August 2011, 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, Andress G. Robinson, filed an appeal from the Superior Court’s April 25, 2011 order denying his third motion for sentence modification under 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) The record before us reflects that, in March 2009, Robinson pleaded guilty to Possession With Intent to Deliver Marijuana and Carrying a Concealed Deadly Weapon. The drug offense required a 3-year minimum mandatory Level V prison sentence based upon Robinson's prior drug convictions. In April 2009, Robinson was sentenced on the drug offense to 3 years at Level V and to a suspended sentence on the weapon offense.

(3) Robinson filed two *pro se* motions for sentence modification in May and October 2009. Robinson did not appeal from the Superior Court's denials of those motions. In this appeal from the Superior Court's denial of his third motion for sentence modification, Robinson claims that the Superior Court incorrectly denied his motion as time-barred under Rule 35(b) because his first motion was filed within 90 days of his original sentence.

(4) Robinson's third motion for sentence modification was filed more than two years after the imposition of his original sentence, well beyond the 90-day time limit of Rule 35(b). Moreover, Robinson has not demonstrated the existence of such "extraordinary circumstances" as would justify the Superior Court's

¹ Supr. Ct. R. 25(a).

consideration of his motion at this time.² We conclude, therefore, that the Superior Court properly denied Robinson's motion.

(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/ Henry duPont Ridgely
Justice

² *Colon v. State*, 900 A.2d 635, 638 (Del. 2006).