

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD R. FENIMORE, JR.,	§
	§
Defendant Below-	§ No. 367, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. Nos. IK91-01-0215
	§ through -0217
Plaintiff Below-	§ Cr. ID 91K00187
Appellee.	§

Submitted: October 15, 2003  
Decided: November 18, 2003

Before **VEASEY**, Chief Justice, **BERGER**, and **JACOBS**, Justices.

**ORDER**

This 18<sup>th</sup> day of November 2003, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Donald Fenimore, Jr., filed this appeal from the Superior Court's denial of his motion for reduction of sentence. The State of Delaware has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Fenimore's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Fenimore entered Robinson pleas in 1991 to charges of first degree burglary and two counts of third degree

unlawful sexual intercourse. The Superior Court sentenced Fenimore on December 13, 1991 to a total period of 30 years imprisonment, suspended after 25 years for 5 years at decreasing levels of supervision. Fenimore did not appeal. The Superior Court docket reflects that the trial judge sent a letter to Fenimore's counsel, dated March 16, 1992. The trial judge's letter acknowledges receipt of counsel's letter dated March 11, 1992 and states that the Superior Court would treat counsel's letter as a motion for reduction of sentence. The letter further reflects that the Superior Court would take no action on counsel's motion unless counsel filed an amendment to the motion upon a determination (presumably to be made by the Department of Correction) that Fenimore was "suitable for a particular treatment program in another state." Counsel never filed an amendment to the motion.

(3) On June 18, 2003, more than eleven years after his sentencing, Fenimore filed a pro se motion for reduction of sentence. The gist of Fenimore's motion was that the Superior Court erred by sentencing him to the statutory maximum on each of his charges. Fenimore contended that the aggravating circumstances cited by the Superior Court at sentencing should only have been considered in imposing an enhanced sentence on the lead burglary charge. Fenimore contends that, under the Truth in Sentencing Guidelines, the Superior Court should have sentenced him on the secondary

charges within the “non-aggravating” range of sentences. Fenimore requested the Superior Court to reduce his sentences on the third degree unlawful sexual intercourse charges to 30 months on each charge.

(4) On June 25, 2003, the Superior Court denied Fenimore’s motion for reduction of sentence on the ground that it was not filed within 90 days of sentencing, and Fenimore had not shown extraordinary circumstances to warrant consideration of the untimely motion.\* We find the Superior Court’s decision to be manifestly correct. Fenimore’s argument that the 90-day limitations period did not apply to him because the Superior Court indefinitely deferred its consideration of Fenimore’s 1992 motion pending an amendment is simply without merit. The Superior Court’s deferral of Fenimore’s March 1992 motion pending additional information was subject to the 90-day limitations period of Rule 35(b). To the extent that Fenimore failed to file an amended motion for reduction of sentence within 90 days of his sentencing, the Superior Court was not required to consider the untimely motion. We find no error in the Superior Court’s holding that there were no extraordinary circumstances to warrant consideration of Fenimore’s untimely motion.

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\* SUPER. CT. CRIM. R. 35(b) (2003) (In the absence of extraordinary circumstances, a motion for reduction of sentence must be “made within 90 days after the sentence is imposed.”).

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

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice