

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK T. FERGUSON,	§
	§
Defendant Below-	§ No. 278, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN99-09-0063; 0064
Plaintiff Below-	§ IN99-09-0862
Appellee.	§ IN99-09-0072

Submitted: June 6, 2003

Decided: July 3, 2003

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

ORDER

This third day of July 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Mark T. Ferguson, filed an appeal from the Superior Court's April 25, 2002 order denying his motion for sentence reduction pursuant to Superior Court Criminal Rule 35(b). We find no merit to the appeal. Accordingly, we affirm.

(2) In June 2000, Ferguson pleaded guilty to two counts of Felony Theft and two counts of Conspiracy in the Second Degree. He was sentenced to a total of eight years incarceration at Level V, to be suspended after five years for eighteen months at decreasing levels of probation.

Ferguson's convictions and sentences were affirmed by this Court on direct appeal.¹ This is Ferguson's second motion for sentence reduction.²

(3) By order dated April 25, 2002, the Superior Court denied Ferguson's second motion for sentence reduction, stating that the sentence imposed was appropriate and Ferguson had not provided sufficient justification to warrant a modification. This appeal followed.

(4) The Superior Court's denial of Ferguson's motion was not an abuse of discretion, although we affirm for reasons other than those cited by the Superior Court.³ As a procedural matter, Rule 35(b) provides that the court will not consider repetitive requests for relief and will not consider an application made more than 90 days after the imposition of a sentence except in "extraordinary circumstances." Ferguson's second motion for sentence reduction clearly was both repetitive and filed beyond the 90-day time limit of Rule 35(b). Moreover, Ferguson has made no showing of "extraordinary circumstances" that would justify consideration of the motion.

¹*Ferguson v. State*, Del. Supr., No. 503, 2000, Walsh, J. (July 18, 2001) (determining, among other things, that Ferguson's guilty plea was voluntarily entered and that there was no basis for a reduction of his sentence).

²The Superior Court denied Ferguson's first motion for sentence reduction in January 2001.

³*Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

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

BY THE COURT:

/s/ Randy J. Holland
Justice