

IN THE SUPREME COURT OF THE STATE OF DELAWARE

QUENTIN LEWIS,	§
	§ No. 56, 2021
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 1609008582 (S)
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 16, 2021

Decided: June 4, 2021

Before **VAUGHN, TRAYNOR**, and **MONTGOMERY-REEVES**, Justices.

ORDER

Upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Quentin Lewis, filed this appeal from the Superior Court’s denial of his motions for sentence modification. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Lewis’s opening brief that his appeal is without merit. We agree and affirm.

(2) On March 8, 2017, Lewis resolved two criminal cases by pleading guilty to first-degree assault and failure to register as a sex offender. The Superior Court sentenced Lewis as follows: (i) for first-degree assault, twenty-five years of Level incarceration, suspended after two years for decreasing levels of supervision;

and (ii) for failure to register as a sex offender, as a habitual offender under 11 *Del. C.* § 4214, one year of Level V incarceration with credit for 175 days previously served. Lewis completed his sentence for failure to register as a sex offender.

(3) On November 21, 2019, the Superior Court found that Lewis had violated his probation and sentenced him to twenty-two years of Level V incarceration, suspended for two years of Level III probation with GPS monitoring. On March 12, 2020, the Superior Court found that Lewis had violated his probation and sentenced him to twenty-one years and eleven months of Level V incarceration, suspended for two years of Level III probation with GPS monitoring.

(4) On August 25, 2020, the Superior Court found that Lewis had violated his probation and sentenced him to twenty-one years and eight months of Level V incarceration, suspended after one year and successful completion of a program within the discretion of the Department of Correction (“DOC”), followed by two years of Level III with GPS monitoring. Lewis subsequently filed motions for sentence modification, sentence review, and correction of illegal sentence. The Superior Court denied all of those motions.

(5) On December 16, 2020, Lewis filed a motion for sentence modification under 11 *Del. C.* § 4221 and a motion for sentence modification under Superior Court Criminal Rule 35(b). On January 6, 2021, the Superior Court denied both motions. This appeal followed.

(6) We review the Superior Court’s denial of a motion for sentence reduction for abuse of discretion.¹ To the extent the claim involves a question of law, we review the claim *de novo*.² In his opening brief, Lewis argues that the Superior Court erred in denying his motions because he completed the required program and he faces a risk of serious illness as a result of DOC’s failure to control the spread of COVID-19 in violation of the Eighth Amendment. In its motion to affirm, the State notes that Lewis is scheduled to be released, with good time credits, sometime in July.

(7) The Superior Court did not err in denying Lewis’s motions. Lewis was not entitled to sentence reduction under § 4221 because that statute, among other things, only applies to minimum or mandatory sentences of one year or less where there is clear and convincing evidence, or a stipulation by the State, that the person suffers from a serious illness with continuing treatment needs that makes incarceration inappropriate and does not constitute a substantial risk to the community.³ Lewis’s motion did not satisfy the § 4221 criteria. As to Lewis’s

¹ *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

² *Id.*

³ 11 *Del. C.* § 4221 (“Notwithstanding any provision of law to the contrary, a court may modify, defer, suspend or reduce a minimum or mandatory sentence of 1 year or less, or a portion thereof, where the court finds by clear and convincing evidence, or by stipulation of the State, that the person to be sentenced suffers from a serious physical illness, injury or infirmity with continuing treatment needs which make incarceration inappropriate and that such person does not constitute a substantial risk to the community.”).

invocation of the Eighth Amendment, the cases he cites relate to the civil liability of prison officials, not the reduction of prisoners' sentences.⁴

(1) Nor was Lewis entitled to sentence reduction under Rule 35(b). Rule 35(b) provides that a motion for sentence reduction that is not filed within ninety days of sentencing will only be considered in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217. Section 4217 permits sentence modification if DOC files an application for good cause shown (such as serious medical illness) and certifies that the offender does not constitute a substantial risk to the community or himself. Rule 35(b) also provides that the Superior Court will not consider repetitive motions for sentence reduction.

(8) Lewis's motion under Rule 35(b) was filed more than ninety days after imposition of his sentence and was repetitive. His asthma (which DOC treats) and fear of exposure to COVID-19 did not constitute extraordinary circumstances.⁵

⁴ See, e.g., *Farmer v. Brennan*, 511 U.S. 825, 837 (U.S. 1994) (holding "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference"). See also *White v. State*, 2021 WL 1828069, at *1 (Del. May 6, 2021) (affirming the Superior Court's denial of a motion for sentence modification where the defendant relied on cases involving the civil liability of prison officials to argue that his risk of contracting COVID-19 implicated the Eighth Amendment).

⁵ See, e.g., *Williams v. State*, 2020 WL 7311325, at *1 (Del. Dec. 10, 2020) (affirming the denial of motion for sentence modification that was based on a "general concern that the Department of Correction . . . was unable to contain the spread of COVID-19 in the prison population").

Although Lewis alleges that DOC refused his request for sentence modification under § 4217, he has not shown there was good cause for such an application.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the Superior Court's judgment is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor
Justice