

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SCOTT MELODY,	§
	§ Nos. 559, 2002
Defendant Below-	§ 629, 2002
Appellant,	§ CONSOLIDATED
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. VN96-02-0894-01
Plaintiff Below-	§
Appellee.	§

Submitted: February 7, 2003  
Decided: March 31, 2003

Before **WALSH, HOLLAND** and **STEELE**, Justices

**ORDER**

This 31st day of March 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Scott Melody, has appealed the Superior Court's September 12, 2002 and October 21, 2002 orders denying his motions for sentence reduction pursuant to Superior Court Criminal Rule 35(b).<sup>1</sup> We find no merit to the appeals. Accordingly, we AFFIRM.

(2) In May 1996, Melody pleaded guilty to Robbery in the First Degree and was sentenced to 10 years incarceration at Level V. On June 11,

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<sup>1</sup>This Court granted Melody's motion to consolidate his appeals from these two orders.

2002, the Superior Court found that Melody had committed a violation of probation (“VOP”) and sentenced him to 5 years at Level V, to be suspended upon successful completion of the Key or Greentree Program for decreasing levels of probation. Melody’s direct appeal of his VOP sentence was affirmed by this Court.<sup>2</sup>

(3) In these consolidated appeals, Melody claims that the Superior Court abused its discretion by imposing a VOP sentence that was inappropriate and excessive. He contends that he needs treatment for mental illness, not a substance abuse program at Level V incarceration, and requests placement at Level III probation.

(4) At the VOP hearing, a probation officer testified that Melody had tested positive for opiates and cocaine and that he had committed several infractions of the mandatory curfew. While Melody insisted that he had not used drugs for 6 ½ years, the probation officer stated that Melody admitted to using cocaine, but thought it would be out of his system by the time of the test. Attempting to explain his admission, Melody stated, “. . . I have been through the system before. I was hoping if I admitted something, and said I was sorry, they would let me slide . . . .” The probation officer

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<sup>2</sup>*Melody v. State*, Del. Supr., No. 373, 2002, Holland, J. (October 16, 2002).

observed that Melody did not appear to want to stop using drugs and needed further treatment.

(5) This Court will not interfere with the Superior Court's refusal to modify a sentence unless it can be demonstrated that the sentence exceeded the maximum authorized by statute or resulted from an abuse of discretion.<sup>3</sup> Melody does not argue that his VOP sentence exceeded the statutory authorization. Nor, based upon our review of the record, do we find any ground for reversal under an abuse of discretion standard.<sup>4</sup>

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>3</sup>*Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992).

<sup>4</sup>*State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002).