

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY L. WILKERSON,	§	
	§	No. 51, 2001
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County
	§	Cr.A.No. S96-03-0409.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9603005035

Submitted: February 27, 2001

Decided: April 5, 2001

Before **HOLLAND, BERGER and STEELE**, Justices.

**ORDER**

This 5<sup>th</sup> day of April 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm<sup>1</sup> pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Gary L. Wilkerson, filed this appeal from an order of the Superior Court denying his motion for sentence reduction. The State of Delaware has moved to affirm the judgment of the

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<sup>1</sup> The Court has not considered the appellant's "Reply to State's Motion to Affirm" that was filed on March 15, 2001. See Supr. Ct. R. 25(a) (providing that "there shall be no briefing, argument or response to the motion [to affirm], unless requested by the Court").

Superior Court on the ground that it is manifest on the face of Wilkerson's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In July 1996, Wilkerson pleaded guilty in the Superior Court, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to Unlawful Sexual Intercourse in the Second Degree. Wilkerson was sentenced to 20 years in prison, suspended after 10 years for decreasing levels of probation. On direct appeal, this Court affirmed Wilkerson's conviction and sentence.<sup>2</sup> In 1999 and 2000, this Court affirmed the Superior Court's denials of Wilkerson's motion for postconviction relief, motion to vacate sentence, and petition for a writ of habeas corpus.<sup>3</sup>

(3) In his motion for reduction of sentence, Wilkerson alleged that the State induced him to sign the 1996 plea agreement by promising (i) to arrange for sex offender treatment for him in an out-of-state correctional facility, and (ii) to support his later application for a sentence reduction. Wilkerson next alleged that the State failed to follow through on its promises. Finally, Wilkerson alleged that the Superior Court accepted the

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<sup>2</sup> *Wilkerson v. State*, Del. Supr., No. 436, 1996, Walsh, J. 1997 WL 328625 (June 4, 1997) (ORDER).

<sup>3</sup> *Wilkerson v. State*, Del. Supr., No. 157, 2000, Veasey, C.J., 2000 WL 1011107 (July 10, 2000) (ORDER), rehr'g denied, (Aug. 15, 2000); *Wilkerson v. State*, Del. Supr., No. 322, 1999, Hartnett, J., 1999 WL 1319338 (Dec. 2, 1999) (ORDER); *Wilkerson v.*

plea agreement and then later refused to enforce it. On appeal, Wilkerson further alleges that he has completed a three-year in-state sex offender program, and that he is now entitled, in accordance with the plea agreement, to support from the State for a reduction of sentence, as well as a reduction of sentence.

(4) Wilkerson's claims are premised, at least in part, upon the mistaken conclusion that the Rule 11(e)(1)(c) plea agreement required that Wilkerson would be placed in a three-year out-of-state treatment program. Wilkerson's claim, that he was entitled under the terms of the plea agreement to out-of-state treatment, has been considered and rejected numerous times by the Superior Court and this Court.<sup>4</sup>

(5) Wilkerson's claim of inducement by the State is directly contradicted by his answers on the Guilty Plea Form<sup>5</sup> and by his sworn statements during the plea colloquy.<sup>6</sup> In the absence of clear and

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*State*, Del. Supr., No. 418, 1998, Walsh, J., 1999 WL 504338 (Mar. 29, 1999) (ORDER).

<sup>4</sup> *See Id.*

<sup>5</sup> The guilty plea form signed by Wilkerson on July 3, 1996, specifically inquires: "Have you been promised anything that is not stated in your written plea agreement?" Wilkerson's hand-written response is "No."

<sup>6</sup> The transcript of the July 3, 1996 guilty plea proceeding reflects the following exchange:

THE COURT: I show you the Plea Agreement; is that your signature?

MR. WILKERSON: Yes sir.

THE COURT: It would appear that the basic plea was offered back in May,

convincing evidence to the contrary, Wilkerson is bound by his answers and statements.<sup>7</sup>

(6) This Court reviews a denial of a motion for reduction of sentence for an abuse of discretion.<sup>8</sup> We have reviewed the record and conclude that, on the face of Wilkerson's opening brief, the appeal is without merit. Wilkerson has not demonstrated that the Superior Court imposed a sentence beyond the maximum authorized by law<sup>9</sup> or otherwise abused its discretion when imposing the sentence upon which the parties agreed.<sup>10</sup> Moreover, Wilkerson's motion was filed more than 90 days after imposition of the sentence, and Wilkerson has not met the requirement to either exception to the time limitation under Superior Court Rule 35(b).<sup>11</sup>

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so you had time to look at it. There have been some amendments, but they're very slight. Is this what you agree to?

MR. WILKERSON: Yes, sir.

THE COURT: I show you the Guilty Plea Form; were you able to read and understand that form before you filled in your answers?

MR. WILKERSON: Yes, sir.

THE COURT: Are your answers true?

MR. WILKERSON: Yes, sir.

Hr'g Transcript at 4.

<sup>7</sup> *Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

<sup>8</sup> *Shy v. State*, Del. Supr., 246 A.2d 926 (1968).

<sup>9</sup> See 11 *Del. C.* §§ 774 (repealed by 71 Del. Laws c. 285, § 12 and replaced by current 11 *Del. C.* § 772), 4205(a)(2).

<sup>10</sup> *Mayer v. State*, Del. Supr., 604 A.2d 839, 842 (1992).

<sup>11</sup> Superior Court Rule 35(b) provides that the Court will not consider an application for sentence reduction made more than 90 days after the imposition of sentence absent extraordinary circumstances or a request by the Department of Correction pursuant to 11 *Del. C.* § 4217.

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/ Carolyn Berger  
Justice