

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN E. FOSTER,	§
	§ No. 301, 2012
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0703031898
Plaintiff Below-	§
Appellee.	§

Submitted: August 1, 2012  
Decided: August 28, 2012

Before **HOLLAND, BERGER,** and **JACOBS,** Justices

**ORDER**

This 28<sup>th</sup> day of August 2012, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, John Foster, filed this appeal from the Superior Court's denial of his motion for modification of sentence under Superior Court Criminal Rule 35(b). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Foster in 2007 of one count each of second degree burglary and second degree robbery. He was declared a habitual offender under 11 Del. C. § 4214(a) and was sentenced to ten

years at Level V incarceration for the burglary charge and to eight years at level V incarceration for the robbery charge.<sup>1</sup> His convictions were affirmed on appeal.<sup>2</sup> Since that time, Foster has filed multiple unsuccessful motions either seeking postconviction relief or modification of his sentence. In April 2012, Foster filed his latest motion for modification of sentence arguing that the Superior Court's prior reduction of his sentence by one year was not enough in light of the assistance that Foster provided to the State in three other criminal prosecutions. The Superior Court denied his motion as repetitive. This appeal ensued.

(3) After careful consideration of the parties' respective arguments, we find no merit to Foster's appeal. Superior Court Criminal Rule 35(b) provides that the Superior Court will not consider repetitive requests for reduction of sentence.<sup>3</sup> Foster has filed several such motions. We find no abuse of the Superior Court's discretion in denying Foster's motion for sentence modification as repetitive.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>1</sup> His eight year sentence was later reduced to seven years.

<sup>2</sup> *Foster v. State*, 961 A.2d 526 (Del. 2008).

<sup>3</sup> Del. Super. Ct. Crim. R. 35(b) (2012).