

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD D. WEBSTER,	§	
	§	No. 623, 2001
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware
v.	§	in and for New Castle County
	§	Cr.A. No. IN98-12-0933 &
STATE OF DELAWARE,	§	IN99-06-1965.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9811006562
	§	9905005187

Submitted: January 18, 2002

Decided: March 26, 2002

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices.

**ORDER**

This 26<sup>th</sup> day of March 2002, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Edward D. Webster, filed this appeal from an order of the Superior Court that denied his third motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b). The State of Delaware has moved to affirm the judgment of the Superior Court on the basis that it is manifest on the face of

Webster's opening brief that the appeal is without merit. We find no merit to the appeal. Accordingly, we affirm.

(2) On January 27, 2000, Webster pled guilty, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to Burglary in the Third Degree and Forgery in the Second Degree. Webster was declared a habitual offender pursuant to 11 *Del. C.* § 4214(a) and was sentenced to a total of five years at Level V, suspended after four years, for one year of probation.

(3) Webster did not file a direct appeal from his conviction and sentence. He did, however, file two motions for modification of sentence in the Superior Court. The Superior Court denied both modification motions.<sup>1</sup>

(4) On September 25, 2001, Webster filed his third motion for modification of sentence. By order dated November 8, 2001, the Superior Court denied Webster's motion. This appeal followed.

(5) The Superior Court's denial of Webster's third motion for modification of sentence was not an abuse of discretion, although we affirm the denial of relief for different reasons.<sup>2</sup> As a procedural matter, Superior Court Criminal Rule 35(b)

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<sup>1</sup>*State v. Webster*, 2001 WL 789657 (Del. Super. Ct.); *State v. Webster*, Del. Super. Ct., No. 9905005187/9811006562, Del. Pesco, J. (Aug. 8, 2000).

<sup>2</sup>An appellate court can affirm the decision of a trial court on different grounds than those articulated below. See *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390

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 sentence except in “extraordinary circumstances.” In this case, it is clear from the record that Webster’s third motion for modification of sentence was both repetitive and beyond the 90-day time limit of Rule 35(b). Webster has made no showing of, and the record does not reveal, “extraordinary circumstances” that would justify consideration of the motion beyond the 90-day time limit for filing the motion. Consequently, it is manifest to the Court that the State’s motion to affirm should be granted.

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/ Myron T. Steele  
Justice

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(Del. 1995); *Bailey v. State*, 588 A.2d 1121, 1122-23 (Del. 1991).