

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLOS TORRES,	§
	§
Defendant Below-	§ No. 360, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1001018873A
Plaintiff Below-	§
Appellee.	§

Submitted: August 31, 2012
Decided: October 10, 2012

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

ORDER

This 10th day of October 2012, 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, Carlos Torres, filed this appeal from a Superior Court judgment denying his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Torres’ opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in June 2011, Torres pled guilty to Manslaughter and Possession of a Firearm during the Commission of a

Felony (PFDCF). The Superior Court sentenced Torres on both charges to a total period of twenty-eight years at Level V incarceration to be suspended after serving eighteen years in prison for decreasing levels of supervision. Torres did not appeal from his September 9, 2011 sentencing. Instead, on October 5, 2011, he filed a pro se motion for reduction of sentence. Counsel was appointed to represent Torres. On February 29, 2012, Torres withdrew his pro se motion for sentence reduction. On June 5, 2012, he filed a pro se motion for sentence modification, which the Superior Court denied. This appeal followed.

(3) In his opening brief on appeal, Torres contends that the Superior Court abused its discretion in denying his motion for modification of sentence as untimely. Torres contends he only withdrew his first timely-filed, pro se motion for sentence reduction after the Superior Court informed him that it would allow him, with new counsel's assistance, to refile a motion for reconsideration of sentence.

(4) This Court will not interfere with the Superior Court's denial of a motion for sentence reduction unless it is shown that the sentence imposed was beyond the maximum authorized by law or was the result of an abuse of

discretion by the sentencing judge.¹ In this case, Torres pled guilty to Manslaughter, a class B felony with a sentencing range of two to twenty-five years,² and to PFDCF, another class B felony with a sentencing range of three to twenty-five years.³ The Superior Court's twenty-eight year total sentence (to be suspended after serving eighteen years in jail), thus, was well within the authorized sentencing range.

(5) Torres sought a reduction of sentence on the basis that drugs had played a major part in his decline and that, since entering prison, he had participated in programs, took responsibility for his actions and sought rehabilitation. He asked the Superior Court to reduce his sentence by ordering his participation in a Level V program and then suspending the balance of his sentence for non-Level V time upon his successful completion of the program.

(6) Even if we assume that Torres' second motion for sentence reduction was timely filed, we nonetheless find no abuse of discretion in the Superior Court's denial of the motion. The Superior Court reconsidered the factual circumstances that led to its imposition of Torres' original sentence and concluded that, while Torres' desire to address his drug problem was

¹ *Conover v. State*, 2005 WL 583746 (Del. Mar. 10, 2005) (citing *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992)).

² See DEL. CODE ANN. §§ 632(1), 4205(b)(2) (2007).

³ See DEL. CODE ANN. § 1447A(b) (2007).

commendable, that desire alone was not a sufficient basis to reduce his sentence. We simply find no abuse of discretion in that ruling.

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

BY THE COURT:

/s/ Carolyn Berger
Justice