

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARD T. EVANS,	§	
	§	No. 385, 2002
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County, in Cr.
	§	ID No. 88K01678DI.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 22, 2002

Decided: October 1, 2002

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

**ORDER**

This 1<sup>st</sup> day of October 2002, upon consideration of the appellant's opening brief, the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), the appellee's motion to dismiss and the appellant's response to the motion to dismiss, it appears to the Court that:

(1) After a Superior Court jury trial in September 1982, the appellant, Ward T. Evans, was convicted of Rape in the First Degree and sentenced to life imprisonment. On direct appeal, this Court affirmed Evans' conviction.<sup>1</sup>

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<sup>1</sup>*Evans v. State*, 2002 WL 257506 (Del. Supr.).

Thereafter, Evans filed numerous State and Federal petitions for postconviction relief, including nine State court postconviction relief petitions. Evans was denied each time.

(2) In its 1989 Order affirming the denial of Evans' seventh postconviction motion, the Court found that Evans had "abused the postconviction process by submitting piecemeal and repetitious petitions concerning his conviction for first degree rape."<sup>2</sup> The Court directed that further applications filed by Evans with respect to his rape conviction and/or sentencing, would not be docketed "without a Justice of this Court first determining that the proposed application was neither repetitious nor frivolous."<sup>3</sup>

(3) Evans' appeal in this case is from the Superior Court's order of June 27, 2002, that (i) denied his motions for modification of sentence; (ii) dismissed his "Motion for Certification of Question of Law"; (iii) denied his motion for appointment of counsel; and (iv) denied, as moot, his "Motion to Amend Motion for New Trial Filed 1/30/02." Evans' appeal was docketed in error

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<sup>2</sup>*Evans v. State*, 1989 WL 47828 (Del. Supr.) at 2.

<sup>3</sup>*Id.*

without prior approval of the Court. For that reason, the appellee, State of Delaware, filed a motion to dismiss the appeal.

(4) On appeal, Evans argues that (a) the 90-day time limitation for sentence modifications under Superior Court Criminal Rule 35(b) was repealed by title 11, section 4217 of the Delaware Code; and (b) the Superior Court failed to review Evans' latest filings or the record before ruling on his motions. It is manifest that the claims raised in this appeal are frivolous. The adoption of section 4217<sup>4</sup> did not repeal the general 90-day limit for sentence modifications.<sup>5</sup>

Evans offers nothing to support his conclusory allegation that the Superior Court failed to review his latest filings and the prior record before ruling on his motions.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to dismiss is moot.

BY THE COURT:

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<sup>4</sup>See Del. Code Ann. tit 11, § 4217 (2001) (providing for a modification of sentence on the basis of an application filed by the Department of Correction).

<sup>5</sup>See Super. Ct. Crim. R. 35(b) (providing for modification of sentence within 90 days after sentencing).

/s/ E. Norman Veasey  
Chief Justice