

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK CROLL,	§
	§
Defendant Below,	§ No. 369, 2012
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§
	§ Cr. ID Nos. 0801001836
Plaintiff Below,	§ and 0803007023
Appellee.	§

Submitted: September 10, 2012  
Decided: October 15, 2012

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

**ORDER**

This 15<sup>th</sup> day of October 2012, upon consideration of appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Patrick Croll, appeals from a Superior Court order denying his motion for correction of sentence. The State of Delaware moved to affirm the judgment below on the ground that it is manifest on the face of Croll’s opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Croll pled guilty in 2008 to Aggravated Menacing, Possession of a Deadly Weapon During the Commission of a

Felony, Unlawful Sexual Contact in the Second Degree, and Endangering the Welfare of a Child. The Superior Court sentenced Croll on February 6, 2009 to a total of thirty-three years at Level V incarceration, to be suspended after serving nineteen years at decreasing levels of supervision. As part of his sentence, Croll was required to register as a sex offender and successfully complete treatment programs addressing issues of domestic violence, anger management and parenting. Croll also was ordered to receive a mental health evaluation and comply with all recommendations for treatment. Croll's direct appeal from his plea and sentence was dismissed as untimely.<sup>1</sup> Croll then moved for postconviction relief, which the Superior Court by order denied. We affirmed that order on appeal.<sup>2</sup>

(3) Thereafter, Croll filed several motions seeking modification of his sentence to include a specific treatment program. The Superior Court denied those motions. On January 6, 2012, the Superior Court modified Croll's sentence to require specifically that Croll receive sex offender treatment. Croll did not appeal. On May 16, 2012, Croll filed a document entitled, "Motion Ex Post Facto," challenging the Superior Court's January 6, 2012 modified sentencing order. The Superior Court treated

---

<sup>1</sup> *Croll v. State*, 2009 WL 1042172 (Del. Apr. 17, 2009).

<sup>2</sup> *Croll v. State*, 2011 WL 486615 (Del. Feb. 9, 2011).

Croll's document as a motion for correction of illegal sentence under Superior Court Criminal Rule 35(a), and denied the motion on the basis that Croll's sentence was legal and appropriate. This appeal followed.

(4) Croll's opening brief on appeal is the identical memorandum of law that he filed in support of his Rule 35 motion in the Superior Court. Although it is not entirely clear, Croll appears to argue that the Superior Court's modified sentencing order violates the *ex post facto* clause of the United States Constitution, because it added sex offender treatment as a condition of the sentence, to which Croll did not agree as part of his plea bargain. Croll argues that his 2008 guilty plea, therefore, should be invalidated.

(5) The *ex post facto* clause of the United States Constitution prohibits the retroactive application of a law that "imposes a punishment for an act which was not punishable at the time it was committed[,] or imposes additional punishment to that then prescribed."<sup>3</sup> As this Court previously has held, internal prison rehabilitation programs are not an element of punishment that attach to an inmate's initial conviction.<sup>4</sup> Thus, such

---

<sup>3</sup> *DiStefano v. Watson*, 566 A.2d 1, 5 (Del. 1989).

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

programs do not implicate the *ex post facto* clause.<sup>5</sup> Moreover, Croll's claim that he is not receiving his choice of programs has no merit because an inmate has no constitutional right to participate in a specific prison program.<sup>6</sup> Accordingly, we find no error in the Superior Court's denial of Croll's motion for correction of sentence.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

---

<sup>5</sup> *Id.*

<sup>6</sup> *Fatir v. State*, 935 A.2d 255 (Del. 2007).