

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DUANE A. MORRISON,	§	
	§	No. 562, 2003
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and
v.	§	for Kent County in IK97-07-
	§	0024.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9701022577

Submitted: January 9, 2004  
Decided: March 24, 2004

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

**ORDER**

This 24<sup>th</sup> day of March 2004, 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, Duane A. Morrison, filed an appeal from the Superior Court's October 22, 2003 order denying his motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Morrison's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In 1997, Morrison pleaded guilty to Delivery of Cocaine. He was sentenced in February 1998 to ten years at Level V imprisonment followed by six months at Level IV supervision.

(3) In June 1999, more than a year after his sentencing, Morrison, acting *pro se*, filed his first motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b) (“Rule 35(b)”). Morrison contended that he had demonstrated “extraordinary rehabilitation” through participation in prison programs and deserved a modification of his sentence so that he could be eligible to participate in further programming. By order dated October 8, 1999, the Superior Court granted Morrison’s motion, modifying his sentence to require his completion of the Greentree Program.

(4) In July 2001, more than three years after his sentencing, Morrison, through counsel, filed his second motion for modification of sentence pursuant to Rule 35(b). Morrison contended that he had completed all available and required rehabilitative programs at the prison, and he requested that his Level V sentence be suspended for participation in the Level IV Crest Program. By order dated August 17, 2001, the Superior Court denied Morrison’s motion on the basis that his claim of “exceptional rehabilitation” was not recommended by

the Department of Correction and thus did not satisfy the requirement of “exceptional circumstances.”

(5) In August 2003, more than five years after his sentencing, Morrison, again proceeding *pro se*, filed his third motion for modification of sentence pursuant to Rule 35(b). Morrison again argued “exceptional rehabilitation.” By order dated October 22, 2003, the Superior Court denied Morrison’s motion as time-barred. This appeal followed.

(6) Rule 35(b) provides that the court may modify a sentence of imprisonment on a motion made within ninety days after the sentence is imposed. On a motion filed more than ninety days after the sentence is imposed, the court will consider a sentence modification “only in extraordinary circumstances” or pursuant to title 11, section 4217 of the Delaware Code. Section 4217 establishes a procedure to permit the Department of Correction to apply for a modification of an offender’s sentence for good cause shown, including “exceptional rehabilitation,” when the Department certifies that the release of the offender shall not constitute a substantial risk to the community or the offender.

(7) On appeal, Morrison observes that the Superior Court could have, but did not, deny his first sentence modification motion as time-barred. Thus,

according to Morrison, it was an abuse of discretion for the Superior Court to deny his most recent sentence modification motion as time-barred.

(8) We have concluded that the Superior Court did not abuse its discretion when it denied Morrison's third motion for sentence modification. The Superior Court properly determined that Morrison's motion was untimely. Moreover, Morrison's motion was repetitive, which also precluded its consideration by the Superior Court.\*

(9) It is manifest on the face of Morrison's opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Justice

---

\*See *Webster v. State*, 2002 WL 487177 (Del. Supr.) (affirming the decision of a trial court on different grounds than those articulated by the trial court).