

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ABDULLAH G. HUBBARD,	§
	§ No. 458, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 9912014861
	§ 9905018910
Plaintiff Below-	§
Appellee.	§

Submitted: October 4, 2011  
Decided: October 20, 2011

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

**ORDER**

This 20<sup>th</sup> day of October 2011, 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 defendant-appellant, Abdullah G. Hubbard, filed an appeal from the Superior Court’s August 8, 2011 order denying his second motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, in February 2002, Hubbard pleaded guilty to Robbery in the First Degree. He was sentenced to 10 years at Level V incarceration, to be suspended after 4 years for decreasing levels of supervision. In April 2009, Hubbard filed his first motion for sentence modification. This Court affirmed the Superior Court's denial of that motion.<sup>2</sup> Hubbard filed a second motion for sentence modification in July 2011. It is from the Superior Court's denial of that motion that he now appeals.

(3) In his appeal, Hubbard claims that he has been diagnosed with glaucoma and has been declared legally blind. He contends that his Level IV sentence should, therefore, be downgraded to Level III probation and that he should not be required to pay any costs or fines.

(4) Rule 35(b) provides that a sentence may be modified within 90 days after it is imposed. It also provides that untimely motions for sentence modification may be considered only in "extraordinary circumstances" and that "repetitive" motions will not be entertained. Because the due date for the filing of Hubbard's Rule 35(a) motion was May of 2002, his present

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Hubbard v. State*, Del. Supr., No. 344, 2009, Holland, J. (Sept. 21, 2009).

motion is clearly untimely. Moreover, because Hubbard has provided no support for his claim that he has been declared legally blind, his claim of “extraordinary circumstances” must fail. While inmates with serious medical conditions may have their sentences reduced under Del. Code Ann. tit. 11, §4217, certification from the Department of Correction that release of the inmate will not “constitute a substantial risk to the community or the defendant . . . .” is required. In the absence of any such certification, Hubbard’s motion was properly denied by the Superior Court.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice