

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANCISCO MORALES,	§	
	§	No. 206, 2004
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	in PN01-04-0447.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0104000110

Submitted: July 6, 2004
Decided: October 7, 2004

BEFORE **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 7th day of October 2004, upon consideration of the appellant's opening brief and the State of Delaware's motion to affirm, it appears to the Court that:

(1) The appellant, Francisco Morales, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Morales' opening brief that this appeal is without merit. We agree and affirm.

(2) In December 2001, Morales pleaded guilty to Trafficking in Cocaine (50-100 grams). He was sentenced to ten years at Level V, five of which comprised a minimum mandatory term, suspended after six years for probation.

(3) In January 2003, Morales filed a motion for modification of sentence. Morales sought a modification on the basis that House Bill 210 had reduced from five years to four years the minimum mandatory sentence for Trafficking in Cocaine that had applied to Morales in December 2001.¹ By order dated April 15, 2004, the Superior Court denied Morales' request for a sentence modification. Relying on its January 13, 2004 decision in *State v. Ismaaeel*, the Superior Court ruled that the ameliorative sentencing provisions of House Bill 210 did not apply retroactively to Morales' sentence.² This appeal followed.

(4) By Order dated July 9, 2004, this Court affirmed the Superior Court's judgment in *State v. Ismaaeel*, thereby rejecting the argument that the

¹See House Bill 210, 74 Del. Laws, Ch. 106 (2003) (codified at Del. Code Ann. tit. 16, § 4753A(a)(2)(b)).

²See *State v. Ismaaeel*, 820 A.2d 644 (Del. Super. 2004) (concluding that H.B. 210 applied only to offenses committed after June 30, 2003, the effective date of the legislation).

amended drug trafficking statute could be applied retroactively.³ Accordingly, we find no error in the Superior Court's denial of Morales' motion for modification of sentence.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³*Ismaaeel v. State*, 2004 WL 1587040 (Del. Supr.).