

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLOS J. PABON,	§	
	§	No. 569, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 0009013750
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 5, 2013

Decided: February 7, 2014

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

ORDER

This 7th day of February 2014, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Carlos J. Pabon, filed this appeal from the Superior Court’s September 24, 2013 denial of his motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b). The appellee, 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.¹ We agree and affirm.

¹ DEL. SUPR. CT. R. 25(a).

(2) The record reflects that Pabon pled guilty to five counts of second degree burglary on May 2, 2001 and was sentenced, on July 27, 2001, to a total of sixteen years at Level V, suspended after eight years for two years at Level IV, suspended after six months for probation. The record reflects that, between 2001 and 2010, Pabon filed numerous motions for modification of sentence, all without success.

(3) On January 27, 2010, Pabon was adjudged guilty of violation of probation (“VOP”) and was resentenced to six years at Level V suspended for 120 days at a VOP Center followed by eighteen months of probation. On July 7, 2010, Pabon was again adjudged guilty of VOP and was resentenced to six years at Level V, suspended for six months at Level IV home confinement, followed by twelve months of probation.

(4) On September 8, 2010, Pabon was charged with a third VOP, and a capias was issued for his arrest. The capias was returned in the Superior Court on August 2, 2013. Thereafter, on August 7, 2013, Pabon was adjudged guilty of VOP and was sentenced to six years at Level V, suspended after four years for six months at Level IV work release, followed by twelve months of probation.

(5) On September 11, 2013, Pabon moved to modify the August 7, 2013 VOP sentence. By order dated September 24, 2013, the Superior Court denied that

motion as without merit and also as repetitive, referencing Pabon's prior "multiple" motions for modification of sentence. This appeal followed.

(6) Having carefully considered the parties' positions on appeal, the Court concludes that the Superior Court's judgment should be affirmed. Pabon correctly points out that this was his first motion to modify his third VOP sentence. Nevertheless, the Superior Court properly noted that Pabon had previously filed multiple motions for modification of sentence in the same case. Pabon has not offered any reason why the Superior Court should have modified his sentence, and the Superior Court properly exercised its broad discretion in denying the motion.²

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² *Shy v. State*, 246 A.2d 926 (Del. 1968).