

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES VANDER HOEVEN IV,	§	
	§	No. 533, 2001
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	VS97-06-0630-01, 0635-01.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9706012224

Submitted: February 14, 2002

Decided: May 10, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 10th day of May 2002, 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, James Vander Hoeven IV, filed this appeal from the Superior Court's order of September 28, 2001, that denied his motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b). The State of Delaware has moved to affirm the judgment of the Superior Court on the basis that it is manifest on the face of Vander Hoeven's opening

brief that the appeal is without merit. We find no merit to the appeal. Accordingly, we affirm.

(2) In December 1997, Vander Hoeven pleaded guilty, pursuant to Superior Court Criminal Rule 11(e)(1)(c), to Burglary in the Second Degree and Criminal Contempt of a Domestic Violence Protective Order. Vander Hoeven was sentenced to a total of nine years at Level V, suspended for three years of probation.

(3) In November 1998, Vander Hoeven was found guilty of violating his probation. He was sentenced in March 1999 to nine years at Level V, suspended after 42 months and completion of the Key Program, for one year at a Level IV residential substance abuse treatment program, suspended after successful completion of the program, for four years at Level III.

(4) Since his March 1999 sentencing, Vander Hoeven has filed numerous unsuccessful motions to reduce, correct and/or modify his sentence.¹ In November and December 2000, Vander Hoeven filed modification motions claiming that the Key Program was not appropriate for

¹It appears from the Superior Court docket that Vander Hoeven's most recent motion for modification was filed in October 2001.

him because he does not have a drug and alcohol problem. The Superior Court denied Vander Hoeven's motions.² Vander Hoeven did not appeal.

(5) On September 27, 2001, Vander Hoeven again moved for modification of his sentence. Claiming personal and family hardship,³ Vander Hoeven requested that the Superior Court remove the Key Program from his sentence so that he could begin the Level IV Crest Program immediately after serving 42 months at Level V. By order dated September 28, 2001, the Superior Court denied Vander Hoeven's motion on the basis that the sentence imposed was appropriate, and that Vander Hoeven should complete the Key Program.

(6) In his opening brief on appeal, Vander Hoeven appears to revert to his previously adjudicated argument that the Key and Crest Programs are "counterproductive" to him because he does not have a drug and alcohol problem. Vander Hoeven's appeal is without merit.

²*State v. Vander Hoeven*, Del. Super., No. 9706012224, Graves, J. (Nov. 20, 2000); *State v. Vander Hoeven*, Del. Super., No. 9706012224, Graves, J. (Dec. 7, 2000).

³Vander Hoeven stated that he had been assaulted and seriously injured by two inmates, that his daughter had been raped, and that one of the rapists was enrolled in the Key Program with him.

(7) Superior Court Criminal Rule 35(b) provides that the court will not consider repetitive requests for relief and will not consider an application made more than 90 days after the imposition of sentence except in “extraordinary circumstances.” In this case, it is clear that Vander Hoeven’s motion for modification of sentence was both repetitive and beyond the 90-day time limit of Rule 35(b). Vander Hoeven has not established the existence of “extraordinary circumstances” that would justify consideration of the motion beyond the 90-day time limit for filing the motion. The Superior Court’s denial of Vander Hoeven’s motion for modification of sentence was not an abuse of discretion.

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/ E. Norman Veasey
Chief Justice