

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT D. ALLEN, JR.,	§
	§
Defendant Below-	§ No. 562, 2002
Appellant,	§
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID. Nos. 83005216DI,
Plaintiff Below-	§ 83005859DI, and 84001230DI
Appellee.	§

Submitted: November 19, 2002  
Decided: December 11, 2002

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

**ORDER**

This 11<sup>th</sup> day of December 2002, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Vincent Allen, filed this appeal from the Superior Court's order denying his motion for modification of sentence. The State has filed a motion to affirm on the ground that it is manifest on the face of Allen's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Allen was convicted, following three separate trials in 1983 and 1984, of two counts of first degree reckless endangering, and multiple counts of burglary, theft, and forgery. In June 2002, Allen filed a motion for modification of sentence requesting the remaining Level V portion of his

sentence be suspended for work release and probation. Allen asserted that, while incarcerated, he has availed himself of numerous educational and treatment programs and that the Superior Court's original sentence consisted solely of Level V incarceration and did not provide for any decreasing levels of supervision to aid Allen's transition to society. The Superior Court denied Allen's motion on the ground that he had not established "extraordinary circumstances" to overcome the ninety-day limitations period in Superior Court Criminal Rule 35(b).<sup>1</sup>

(3) We have reviewed the record and the parties' respective contentions carefully. We find no abuse of discretion in the Superior Court's denial of Allen's motion. Although commendable, Allen's prison record is not sufficient to establish "extraordinary circumstances" under Rule 35(b).<sup>2</sup> The only other exception to the time limitation of Rule 35(b) is the procedure set forth DEL. CODE ANN. tit. 11, § 4217, which permits the Department of Correction to apply for an offender's sentence modification based on "exceptional rehabilitation." The Department of Correction has not submitted such an application. Accordingly, we find that the judgment below should be affirmed on the basis of, and for the

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<sup>1</sup> Superior Court Criminal Rule 35(b) provides in part: "The court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed....The court will consider an application made more than 90 days after the imposition of sentence only in extraordinary circumstances or pursuant to 11 Del. C. § 4217."

<sup>2</sup> See *Ketchum v. State*, 2002 WL 1290900 (Del. Supr.).

reasons set forth in, the Superior Court's well-reasoned decision dated September 25, 2002.

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/ Myron T. Steele  
Justice