

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. WEBB, JR.,	§
	§
Defendant Below-	§ No. 177, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. 99-08-0767
Plaintiff Below-	§ 99-08-0768
Appellee.	§ 99-08-2482
	§ VN97-03-0286-01

Submitted: May 29, 2002

Decided: July 25, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 25th day of July 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 defendant-appellee, William J. Webb, Jr., filed this appeal from the Superior Court's February 28, 2002 order denying his motion for modification of sentence pursuant to Superior Court Criminal Rule 35. The plaintiff-appellee, State of Delaware, has moved to affirm the judgment of the

Superior Court on the ground that it is manifest on the face of Webb's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In this appeal, Webb claims that: a) the Superior Court's denial of his Rule 35 motion constituted an abuse of discretion; b) the Superior Court misrepresented the nature of his plea agreement in its order; c) his right to a speedy trial was violated; and d) the Superior Court judge who issued the order should have recused himself.

(3) In March 2000, Webb pleaded guilty to Burglary in the First Degree, Assault in the First Degree, and Endangering the Welfare of a Child, and also admitted to a violation of probation ("VOP") in connection with a 1997 burglary conviction. Webb did not file a direct appeal of his convictions or sentences. He filed two postconviction motions, both of which were denied by the Superior Court. Webb appealed the Superior Court's denial of his second motion to this Court and we affirmed the Superior Court's judgment.¹ Webb then filed a motion for reargument, which we denied.² While his appeal was

¹*Webb v. State*, Del. Supr., No. 589, 2000, Veasey, C.J. (Dec. 7, 2001). Because there was an error in Webb's burglary sentence, we remanded the matter to the Superior Court for the limited purpose of correcting that error.

²*Webb v. State*, Del. Supr., No. 589, 2000, Veasey, C.J. (Jan. 30, 2002).

pending, Webb filed a postconviction motion in connection with his VOP, which the Superior Court denied. We subsequently granted the State's motion to affirm the Superior Court's judgment.³

³*Webb v. State*, Del. Supr., No. 373, 2001, Steele, J. (Mar. 22, 2002). In that decision, this Court held, among other things, that Webb was procedurally barred from pursuing his claim that his sentence was based on false information because he did not file a motion challenging the sentence within 90 days of its imposition and there were no extraordinary circumstances excusing the procedural default. SUPER. CT. CRIM. R. 35(b).

(4) Webb’s first claim is without merit. In the absence of any evidence that Webb’s sentences were illegal⁴ or any evidence of “extraordinary circumstances” justifying consideration of Webb’s untimely claim,⁵ the Superior Court did not abuse its discretion when it denied his Rule 35 motion.⁶ As for Webb’s second claim, while the Superior Court in its order apparently stated in error that Webb had entered into a Rule 11(e) (1) (C) plea agreement with the State,⁷ there is no evidence that any such error had a prejudicial impact on Webb. Webb’s third claim of a violation of his right to a speedy trial was waived when he entered his guilty plea.⁸ Finally, Webb’s fourth claim that the Superior Court judge should have recused himself is without any factual basis.⁹

(5) It is manifest on the face of Webb’s opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled

⁴SUPER. CT. CRIM. R. 35(a).

⁵SUPER. CT. CRIM. R. 35(b).

⁶While the Superior Court cited other grounds for its denial of Webb’s motion, we may affirm the Superior Court’s decision on grounds different than those articulated below. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

⁷Webb contends that the plea was entered pursuant to SUPER. CT. CRIM. R. 11(e) (1) (B).

⁸*Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

⁹*Los v. Los*, 595 A.2d 381, 385 (Del. 1991).

Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey

Chief Justice