

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD R. COCHRAN,	§
	§ No. 156, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0102010757
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 7, 2005

Decided: December 8, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

**ORDER**

This 8<sup>th</sup> day of December 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Donald R. Cochran, filed an appeal from the Superior Court’s April 4, 2005 order denying his second motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In February 2003, Cochran entered Robinson pleas<sup>1</sup> to Burglary in the First Degree, Assault in the First Degree, and Possession of a Deadly Weapon During the Commission of a Felony. On the burglary conviction,

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<sup>1</sup> Super. Ct. Crim. R. 11(b).

he was sentenced to 20 years incarceration at Level V, to be suspended after 6 years for decreasing levels of probation. He was sentenced to 10 years incarceration at Level V and 2 years incarceration at Level V on the assault and weapons convictions, respectively. This Court dismissed Cochran's direct appeal as untimely.<sup>2</sup>

(3) In this appeal, Cochran claims that: a) the Superior Court judge who denied his motion should have disqualified himself; and b) the Superior Court judge should have excused the untimeliness of the motion on the ground of extraordinary circumstances due to Cochran's "mental illness."

(4) A judge should disqualify himself in a proceeding in which the judge's impartiality "might reasonably be questioned."<sup>3</sup> This rule includes instances where "[t]he judge has a personal bias or prejudice concerning a party . . . ."<sup>4</sup>

(5) The Superior Court docket sheet in this case reflects that the Superior Court judge who denied Cochran's second motion for sentence modification presided over Cochran's initial case review. Two other Superior Court judges presided over Cochran's final case review and the entry of Cochran's Robinson pleas, respectively. The original judge then

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<sup>2</sup> *Cochran v. State*, Del. Supr., No. 356, 2003, Veasey, C.J. (Nov. 12, 2003).

<sup>3</sup> Del. Judges' Code of Judic. Cond., Canon 3C (1); *Stevenson v. State*, 782 A.2d 249, 255-58 (Del. 2001).

<sup>4</sup> Del. Judges' Code of Judic. Cond., Canon 3C (1) (a).

granted Cochran's request for a continuance of the sentencing date. After Cochran's sentencing was continued for a second time, the docket sheet notes that the sentencing should not be handled by the original judge because of a "possible conflict." Cochran's sentencing hearing was presided over by another Superior Court judge, who also denied Cochran's first motion for sentence modification. While Cochran contends that his counsel told him that the original judge had a personal relationship with the victim's family, there is nothing in the record to support that contention.

(6) We find Cochran's first claim to be without merit. Even assuming that the Superior Court judge should have disqualified himself from ruling on Cochran's second motion for sentence modification,<sup>5</sup> the outcome would have been the same if another Superior Court judge had decided it, since there is no question that Cochran's motion was not only untimely, but repetitive.<sup>6</sup>

(7) Cochran's second claim also is unavailing. Even assuming that Cochran's "mental illness" would have excused his untimely motion, the

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<sup>5</sup> We note that Cochran's second motion for sentence modification was decided approximately two years after the judge's last involvement with Cochran's case.

<sup>6</sup> Super. Ct. Crim. R. 35(b).

Superior Court was, nevertheless, compelled to deny the motion as repetitive.<sup>7</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>7</sup> Id.