

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMAR A. TROWER,	§
	§
Defendant Below-	§ No. 75, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 1012013304
Plaintiff Below-	§
Appellee.	§

Submitted: February 29, 2012
Decided: April 3, 2012

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

ORDER

This third day of April 2012, upon consideration of appellant’s opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The appellant, Lamar Trower, filed this appeal from a Superior Court judgment denying his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Trower’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Trower pled guilty on March 30, 2011 to two counts of Burglary in the Third Degree, one count of Theft Over \$1500, and one count of Conspiracy in the Second Degree. In exchange for

his guilty plea, the State dismissed nine other criminal charges. The Superior Court immediately sentenced Trower to a total period of ten years at Level V incarceration, with credit for 90 days served, to be suspended after serving three years in prison for one year at Level IV Crest, to be suspended upon successful completion of the Crest Program for one year at Level III Crest Aftercare.

(3) Thereafter, the Superior Court modified Trower's sentence twice. First, on June 20, 2011, the Superior Court reduced one of Trower's sentences for burglary from three years at Level incarceration to two years and six months at Level V incarceration, which had the effect of reducing the unsuspended portion of Trower's sentence by six months. On August 26, 2011, the Superior Court again amended Trower's sentence to require him to pay \$1000 in restitution to one of the burglary victims.

(4) Since his original sentencing, Trower filed four motions seeking a modification of his sentence. The Superior Court denied each of those motions, and Trower did not appeal. Trower filed his fifth motion for modification of sentence on December 29, 2011. The Superior Court denied that motion on February 2, 2012.

(5) This appeal followed. Trower contends in his opening brief on appeal that his sentence is excessive because the Superior Court sentenced

him to four years and six months at Level III probation, which exceeds the maximum probationary period allowed by Delaware law.¹ We find no merit to Trower's appeal.

(6) First, the record reflects that Trower's latest sentence modification motion was both untimely and repetitive. Superior Court Criminal Rule 35(b) provides, in relevant part, that a motion for sentence modification shall be filed within ninety days after the sentence is imposed.² The Superior Court may consider a motion for modification of sentence made more than ninety days after sentencing only in extraordinary circumstances. Moreover, Rule 35(b) provides that the Superior Court will not consider repetitive requests for sentence modification.

(7) In this case, Trower's latest motion was filed more than ninety days after he was originally sentenced. He also had filed four previous requests to modify his sentence. Consequently, his most recent motion for sentence modification was both untimely and repetitive. Trower failed to establish any extraordinary circumstance to warrant consideration of his untimely and repetitive motion.

(8) Finally, as the State points out, Trower has misinterpreted the Superior Court's sentencing order. In fact, the Superior Court's overall

¹ Del. Code Ann. tit. 11, § 4333(b)(3) (2007) (providing, in applicable part, that a period of probation for a nonviolent, non-drug related offense shall be limited to one year).

² See Del. Super. Ct. Crim. R. 35(b).

sentencing scheme requires that Trower spend two and a half years in prison, followed by one year at Level IV Crest, to be suspended upon successful completion of the Crest Program for one year at Level III Crest Aftercare. Any other periods of probation imposed by the Superior Court were ordered to run concurrently with the Crest Aftercare probation. Accordingly, Trower will spend only one year at Level III probation supervision. This period of probation does not exceed the maximum probationary period under title 11, section 4333(b) of the Delaware Code.

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

BY THE COURT:

/s/ Randy J. Holland
Justice