

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOWARD J. THOMAS,	§
	§
Defendant Below-	§ No. 472, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID. No. 9806017803
Plaintiff Below-	§
Appellee.	§

Submitted: October 21, 2002
Decided: November 25, 2002

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

ORDER

This 25th day of November 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, Howard Thomas, 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 Thomas' opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Thomas pled guilty in August 1998 to felony DUI, driving while his license was suspended, and leaving the scene

of an accident. The Superior Court sentenced him to 34 months at Level V incarceration, suspended after serving six months for 28 months at decreasing levels of supervision. Following his fifth violation of probation, the Superior Court sentenced Thomas in January 2002 to a total of 31 months at Level V incarceration, to be suspended upon successful completion of the Key Program for decreasing levels of supervision. Thomas did not appeal this sentence. Instead, he filed a motion for reduction of his sentence in March 2002, which the Superior Court denied. Thomas did not appeal. In July 2002, he filed a second motion for reduction of sentence, which the Superior Court denied. This appeal followed.

(3) We have reviewed the record and the parties' contentions carefully. We find the decision of the Superior Court to be manifestly correct. Pursuant to Superior Court Criminal Rule 35(b),* a motion for reduction of sentence must be filed within 90 days of sentencing. Thomas' motion was filed nearly seven months after his VOP sentencing and, therefore, was untimely. Moreover, Rule 35(b) prohibits repetitive requests for reduction of sentence. Given that Thomas' motion was both untimely

* 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 not consider repetitive requests for reduction of sentence...."

and repetitive, we conclude that the Superior Court did not abuse its discretion in denying the motion.

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/ Carolyn Berger
Justice