

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIAL M. COX,	§
	§
Defendant Below-	§ No. 155, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0411018401
Plaintiff Below-	§
Appellee.	§

Submitted: May 31, 2006

Decided: July 10, 2006

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

**ORDER**

This 10<sup>th</sup> day of July 2006, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Danial Cox, filed this appeal from the Superior Court's denial of his second motion for modification of sentence. The State of Delaware has filed a motion seeking to affirm the Superior Court's judgment on the ground that it is manifest on the face of Cox's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Cox pled guilty in January 2005 to one count of third degree burglary. In May 2005, he pled guilty to one count of possession of a deadly weapon by a person prohibited. The Superior Court

sentenced him on both charges in June 2005. Cox was sentenced on the burglary charge to three years at Level V imprisonment to be suspended after 30 days for one year probation. On the weapon charge, he was sentenced to four years at Level V imprisonment to be suspended after serving two and a half years. In January 2006, Cox filed a motion to modify the sentence associated with his weapon conviction on the ground that the only aggravating circumstance justifying a sentence in excess of the SENTAC guidelines was a prior felony conviction that was more than twenty years old. The Superior Court denied the motion to modify because it was untimely and repetitive and because the sentence was appropriate. This appeal followed.

(3) After careful consideration, we find the Superior Court's denial of Cox's motion to be manifestly correct. Superior Court Criminal Rule 35(b) requires a motion to modify a sentence to be filed within 90 days of sentencing unless there are extraordinary circumstances, which do not exist in this case. Rule 35(b) also prohibits the filing of repetitive sentence modification motions, and the record reflects that this was Cox's second motion to modify. Finally, the SENTAC sentencing guidelines permit an upward departure from the guidelines if the defendant has a prior violent felony conviction. Cox's 1981 convictions for first degree assault, first

degree burglary, and possession of a deadly weapon during the commission of a felony were all prior violent felonies that, regardless of the age of the convictions, the Superior Court was permitted to consider in fashioning Cox's most recent sentence.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice