

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY W. SIMPKINS,	§	
	§	No. 53, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	Kent County in Cr. ID No.
	§	0410008967.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 24, 2006  
Decided: July 14, 2006

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

**ORDER**

This 14<sup>th</sup> day of July 2006, 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) On September 14, 2005, Simpkins pleaded *nolo contendere* to Rape in the Fourth Degree and Noncompliance with Conditions of Bond. The Superior Court sentenced Simpkins to a total of twelve years at Level V imprisonment, suspended after eighteen months for probation.

(2) On October 24, 2005, Simpkins filed a motion for reduction of sentence pursuant to Superior Court Criminal Rule 35(b). Simpkins alleged

involuntary guilty plea, recantation of victim, ineffective assistance of counsel and financial hardship.

(3) By order dated January 4, 2006, the Superior Court denied Simpkins' Rule 35(b) motion on the basis that the sentence "was imposed pursuant to a Plea Agreement between the State and the defendant and signed by the defendant." This appeal followed. In his opening brief on appeal, Simpkins argues ineffective assistance of counsel.

(4) "Delaware law is well established that appellate review of sentences is extremely limited."<sup>1</sup> This Court will not interfere with the Superior Court's denial of a motion for reduction of sentence unless it is demonstrated that the sentence exceeded the maximum authorized by statute or was an abuse of the court's discretion.<sup>2</sup>

(5) In Simpkins' case, the record does not reflect that the Superior Court imposed a sentence that was beyond the maximum allowed by law or

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<sup>1</sup>*Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

<sup>2</sup>*Melody v. State*, 2003 WL 1747237 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992)).

otherwise abused its discretion when imposing the sentence.<sup>3</sup> To the extent Simpkins argues otherwise on appeal, his appeal is without merit.

(6) The Court declines to consider the balance of Simpkins' arguments on appeal, *e.g.*, involuntary guilty plea and ineffective assistance of counsel, which are in the nature of postconviction relief.<sup>4</sup> Those arguments either were raised for the first time on appeal or were not explicitly ruled upon by the Superior Court in the first instance.<sup>5</sup>

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

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<sup>3</sup>*See* Del. Code Ann. tit. 11, §§ 770, 4205(b)(3) (2001 & Supp. 2004) (providing that Rape in the Fourth Degree is punishable up to fifteen years at Level V incarceration); Del. Code Ann. tit. 11, § 2113(c)(1) (2001) (providing that Noncompliance with Conditions of Bond in connection with a felony is punishable up to five years imprisonment).

<sup>4</sup>*See* Del. Super. Crim R. 61(governing postconviction remedy) (2006).

<sup>5</sup>Del. Supr. Ct. R. 8.