

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMIAH L. SEWELL,	§	
	§	No. 615, 2002
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr. ID Nos. 9801013800
STATE OF DELAWARE,	§	& 9808007468.
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 3, 2003  
Decided: March 6, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**ORDER**

This 6<sup>th</sup> day of March 2003, upon consideration of the appellant's opening brief and appendix and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In May 1998, the appellant, Jeremiah L. Sewell, pled guilty to a charge of Riot and was sentenced to three years at Level V imprisonment, suspended for one year at Level III probation, followed by one year at Level II probation. In February 1999, Sewell pled guilty to a charge of Burglary in the Second Degree and was sentenced to three years at Level V imprisonment, suspended upon successful completion of Boot Camp for probation. Sewell

was found to have violated his Riot probation on four occasions: March 25, 1999, June 25, 1999, May 2, 2001, and November 2, 2001. Sewell was found to have violated his Burglary in the Second Degree probation on two occasions: May 2, 2001, and November 2, 2001.

(2) On December 7, 2001, Sewell was found guilty of having violated his two probations and was sentenced to a total of five years and six months at Level V. On appeal, this Court affirmed the Superior Court's judgment.<sup>1</sup> On July 11, 2002, the Superior Court modified Sewell's sentence to reflect credit for time served, resulting in a total sentence of four years and six months to be served at Level V.

(3) On October 22, 2002, Sewell moved to modify his sentence, pursuant to Superior Court Criminal Rule 35(b). In his October 2002 motion, Sewell requested that the Superior Court modify his sentence (i) to incorporate the Greentree Treatment Program and (ii) to consider moving him to a residential drug treatment program that would allow Sewell to have access to his ailing mother and new baby. Sewell also requested that his sentence be credited for time he spent at Level V in the Key Program. The Superior Court denied Sewell's motion on October 24, 2002. This appeal followed.

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<sup>1</sup>*Sewell v. State*, 2002 WL 651271 (Del. Supr.).

(4) On appeal from the denial of his Rule 35(b) motion, Sewell argues, pursuant to Superior Court Criminal Rule 35(a), that his sentence is illegal because the Superior Court erred when it revoked Sewell's probation for the burglary offense before he had begun serving that sentence. Because Sewell did not present this claim to the Superior Court in his Rule 35(b) motion, the claim will be considered only for plain error.<sup>2</sup> On the other hand, because Sewell has chosen not to brief his Rule 35(b) claims, those claims are deemed waived and abandoned and will not be considered on appeal.<sup>3</sup>

(5) "Relief under [Superior Court Criminal] Rule 35(a) is available 'when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the Double Jeopardy Clause . . . .'"<sup>4</sup> In this case, Sewell cannot demonstrate any plain error in the revocation of the unexecuted portion of his probationary sentence. Under title 11, section 4333 of the Delaware Code, the Superior Court has broad authority to terminate probationary sentences "at any

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<sup>2</sup>Supr. Ct. R. 8; *Trump v. State*, 753 A.2d 963, 971 (Del. 2000) (citing *Wainwright v State*, 504 A.2d 1096, 1100) (1986)).

<sup>3</sup>*Somerville v. State*, 703 A.2d 629, 631 (1997).

<sup>4</sup>*Tatem v. State*, 787 A.2d 80, 81 (Del. 2001).

time.”<sup>5</sup> “This Court has interpreted [section 4333] to mean that the Superior Court may revoke a grant of probation prior to its actual commencement.”<sup>6</sup>

(6) It is manifest on the face of Sewell’s opening brief that this appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

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/Joseph T. Walsh

Justice

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<sup>5</sup>*Williams v. State*, 560 A.2d 1012, 1015 (Del. 1989).

<sup>6</sup>*Cornish v. State*, 1998 WL 382641 (Del. Supr.) (citing *Williams v. State*, 560 A.2d 1012, 1013 (1989)).