

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|-------------------------------|
| RAHSAAN K. JONES, | § | |
| | § | No. 131, 2003 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court of |
| | § | the State of Delaware, in and |
| v. | § | for Kent County in Cr. A. |
| | § | Nos. IK00-10-0094, 0098; Cr. |
| STATE OF DELAWARE, | § | A. No. VK98-03-0792-01. |
| | § | |
| Plaintiff Below, | § | Def. ID Nos. 9803010389 |
| Appellee. | § | 0009019188 |

Submitted: March 31, 2003
Decided: May 22, 2003

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

ORDER

This 22nd day of May 2003, upon consideration of the appellant’s opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The appellant, Rahsaan Jones, filed this appeal from the Superior Court’s order of February 14, 2003, that summarily denied his “motion for review of sentence.” The State has filed a motion to affirm on the ground that it is manifest on the face of Jones’ opening brief that the appeal is without merit. We agree and affirm.

(2) In 2001, Jones pleaded guilty to two charges of Burglary in the Third Degree. The Superior Court sentenced Jones to a total of six years at

Level V, suspended after serving one year, for two years at Level IV followed by eighteen months at Level III, to be held at Level V while waiting for space at Level IV. Jones was also found in violation of probation and was resentenced to one year at Level V imprisonment.

(3) On October 15, 2001, Jones filed a motion for modification of sentence. On September 24, 2002, Jones filed a second motion for modification of sentence. By order dated October 8, 2002, the Superior Court denied Jones' modification motions, finding that the motions were time-barred and did not demonstrate "extraordinary circumstances," as required by Superior Court Criminal Rule 35(b).

(4) On February 3, 2003, Jones filed a motion requesting a "review of sentence." Specifically, Jones requested that the Superior Court "change" his sentence to provide for his immediate placement at Level IV upon his completion of his time at Level V. By order dated February 14, 2003, the Superior Court denied Jones' motion on the basis that it was filed after the ninety-day time limit of Superior Court Criminal Rule 35(b). This appeal followed.

(5) Superior Court Criminal Rule 35(b) provides that the Superior Court may consider a motion to reduce a sentence only if such motion is made

within ninety days after the sentence is imposed or upon a showing of extraordinary circumstances. The Superior Court may not consider repetitive requests for reduction of sentence.

(6) We find no abuse of discretion in the Superior Court’s denial of Jones’ motion for modification of sentence. Jones’ motion was repetitive and filed well beyond the ninety-day limit of Superior Court Criminal Rule 35(b). Jones did not establish extraordinary circumstances sufficient to overcome the time bar. Although Jones on appeal argued that the Superior Court abused its discretion when it considered the “motion for sentence review” under the provisions of Superior Court Criminal Rule 35(b), Jones’ claim is without merit. There is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.

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