

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD E. SHOCKLEY, JR.,	§
	§
Defendant Below-	§ No. 222, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID No. 0203023972
Plaintiff Below-	§
Appellee.	§

Submitted: May 30, 2007  
Decided: August 2, 2007

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

**ORDER**

This 2<sup>nd</sup> day of August 2007, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Richard Shockley, filed this appeal from the Superior Court's order denying his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Shockley's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that, in March 2003, a Superior Court jury found Shockley guilty of attempted third degree burglary, possession of

burglar tools, and criminal mischief. He was sentenced as an habitual offender to a total period of seven and a half years at Level V imprisonment, to be suspended after serving five years for decreasing levels of supervision. This Court affirmed his convictions and sentence on direct appeal.<sup>1</sup>

(3) Since that time, Shockley has filed several unsuccessful motions seeking various forms of relief, including modification of his sentence. Shockley filed his latest motion for modification of sentence on April 12, 2007. He argued that the Department of Correction had violated the terms of the Superior Court's sentencing order by sending him to the Greentree Program for drug treatment, instead of the Key Program, which was specified in the Superior Court's sentencing order. As a result of the DOC's failure to place him in the Key Program, Shockley contends that he will not be credited with having completed prior drug treatment and thus will be required to spend 90 days at Level IV Crest instead of 30 days. Shockley requested the Superior Court to modify his sentence to substitute the Greentree Program for the Key Program and to suspend the Level IV Crest portion of his sentence for Level III probation. The Superior Court denied Shockley's motion on the ground that it was time-barred and because a reduction or modification of sentence was not warranted.

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<sup>1</sup> *Shockley v. State*, 2004 WL 1790198 (Del. 2004).

(4) In his opening brief on appeal, Shockley contends that a modification of sentence is warranted due to extraordinary circumstances. Shockley asserts that he has Hepatitis-C and is being denied treatment because he has less than one year left to serve at Level V incarceration. This issue, however, was not raised to the Superior Court in his sentence modification motion. Accordingly, this Court will not consider it for the first time on appeal.<sup>2</sup> Moreover, Shockley's factual assertions about his medical condition are not supported by any evidence. Accordingly, under the circumstances, we find no abuse of the Superior Court's discretion in denying Shockley's second motion for modification of sentence because the motion was both untimely and repetitive.<sup>3</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/ Myron T. Steele  
Chief Justice

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<sup>2</sup> See Del. Supr. Ct. R. 8 (2007).

<sup>3</sup> See *Briddell v. State*, Del. Supr., No. 399, 2002, Holland, J. (Nov. 6, 2002).