

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN FOSTER,	§
	§
Defendant Below-	§ No. 71, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0104018498
Plaintiff Below-	§
Appellee.	§

Submitted: July 20, 2007

Decided: October 15, 2007

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

ORDER

This 15th day of October 2007, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Kevin Foster, filed this appeal from the Superior Court's denial of his motion for correction of sentence. We find no merit to Foster's appeal. Accordingly, we affirm the judgment of the Superior Court.

(2) The record reflects that Foster pled guilty in September 2002 to Maintaining a Vehicle for Keeping Controlled Substances, Conspiracy in the Second Degree, and Unlawful Dealing in a Switchblade. The Superior Court sentenced him to a total period of four and a half years at Level V incarceration, to be suspended after serving two and a half years for

decreasing levels of supervision. In November 2005, Foster was found guilty of violating the conditions of his probation. The Superior Court sentenced him on the Maintaining a Vehicle charge to six months at Level V and, on the Conspiracy charge, to eighteen months at Level V, to be suspended upon successful completion of the Key Program for eighteen months at Level IV Crest.

(3) The parties agree that the Superior Court's VOP sentence associated with the conspiracy charge was incorrect because it exceeded the eighteen months remaining on the suspended portion of his original sentence. Accordingly, the Superior Court corrected that portion of the VOP sentence in December 2006 to reflect that Foster's sentence associated with the conspiracy charge was eighteen months at Level V, to be suspended upon successful completion of the Key Program for the balance to be served at Level IV Crest.

(4) Foster filed this appeal from the Superior Court's denial of his fourth motion for modification of his VOP sentence. After careful consideration of the parties' respective positions on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's summary decision dated February 1, 2007. Foster's VOP sentence, which was modified in December 2006, was legal because it did

not exceed the balance of the original sentence suspended by the Superior Court in 2002.¹ Accordingly, we find no abuse of the Superior Court's discretion in denying Foster's motion for modification of sentence on the grounds that the motion was both time-barred and repetitive.²

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ See *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).

² See Del. Super. Ct. Crim. R. 35(b).