

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. BROWN,	§
	§ No. 342, 2007
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0507003348
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 28, 2007
Decided: November 15, 2007

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

ORDER

This 15th day of November 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James E. Brown, filed an appeal from the Superior Court's June 25, 2007 order denying his motion for sentence reduction pursuant to Superior Court Criminal Rule 35(b). Because Brown has received the relief he requested, his appeal is denied as moot.

(2) In September 2005, Brown pleaded guilty to Possession With Intent to Distribute Heroin. He was sentenced to 5 years of Level V incarceration, to be suspended for time served for 18 months at Level III probation.

(3) In November 2005 and April 2006, the Superior Court found that Brown had committed violations of probation (“VOPs”). He was sentenced to 5 years at Level V, to be suspended after 5 months for 18 months at Level III. In November 2006, Brown again was found to have committed a VOP and was sentenced to 4 years and 7 months at Level V, to be suspended for Level III upon entry into the Gateway-Residential Drug/Alcohol Treatment Program.

(4) Brown then filed a motion to be transferred from Level V to Level III on the ground that he had applied for, but had not been accepted into, the Gateway treatment program. The Superior Court denied the motion as untimely under Rule 35(b). The record reflects that, shortly thereafter, the Superior Court modified Brown’s sentence, resulting in his release from Level V incarceration to another Level III treatment program.

(5) The record reflects that Brown’s motion for sentence reduction was filed on March 6, 2007, three weeks beyond the 90-day period required under Rule 35(b). As such, the Superior Court neither erred nor abused its discretion in denying Brown’s motion as untimely. The record also reflects that the Superior Court modified Brown’s sentence on July 11, 2007 and that Brown has been released from Level V incarceration and currently is on

Level III probation. As such, Brown has received the relief he requested in his Rule 35(b) motion.

NOW, THEREFORE, IT IS ORDERED that, because Brown has received the relief he requested in his Rule 35(b) motion, this appeal is DENIED AS MOOT.

BY THE COURT:

/s/ Jack B. Jacobs
Justice