

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS FIDALGO,	§
	§ No. 442, 2023
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID Nos. 2112000947 and
STATE OF DELAWARE,	§ 2111014013 (N)
	§
Appellee.	§
	§

Submitted: February 5, 2024

Decided: March 22, 2024

Before **SEITZ**, Chief Justice; **VALIHURA** and **GRIFFITHS**, Justices.

ORDER

Upon consideration of the appellant's opening brief, the appellee's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Luis Fidalgo, filed this appeal from the Superior Court's denial of a motion in which Fidalgo sought to have his sentences for two criminal offenses modified to run concurrently instead of consecutively. The State has moved to affirm the judgment below on the ground that it is manifest on the face of Fidalgo's opening brief that his appeal is without merit. We agree and affirm.

(2) Fidalgo resolved charges in two criminal cases by pleading guilty to stalking with a weapon, second-degree assault, act of intimidation, two counts of non-compliance with bond conditions, resisting arrest, and terroristic threatening.

After a presentence investigation, the Superior Court sentenced Fidalgo on December 2, 2022. The sentences imposed for the assault and stalking offenses—the sentences at issue in this appeal¹—were as follows: for stalking with a weapon, fifteen years of imprisonment, suspended after seven years for decreasing levels of supervision, and for second-degree assault, five years of imprisonment, suspended after three years for two years of Level III supervision with GPS monitoring. The sentence order provided that all sentences of confinement would run consecutively.²

(3) After filing various unsuccessful motions for postconviction relief or modification of sentence, in August 2023 Fidalgo filed a motion in which he asked the Superior Court to run his assault and stalking sentences concurrently instead of consecutively. The Superior Court denied the motion. The court held that the motion was an untimely and repetitive motion for sentence modification under Superior Court Rule of Criminal Procedure 35(b). The court also stated that it “was aware of its ability to sentence concurrently at the time of sentencing” but determined that the consecutive sentences were and remained appropriate.

(4) Fidalgo has appealed to this Court. He argues that the Superior Court gave insufficient weight to his statements that he “feel[s] bad” and “regret[s] all that

¹ For the other offenses, Fidalgo was sentenced to suspended time or to pay a fine.

² See 11 *Del. C.* § 3901(d) (“The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant. . . .”).

happened” and that the court erroneously determined that Fidalgo’s motion was time-barred under Rule 35(b), because he filed the motion under 11 *Del. C.* § 3901(d) and not under Rule 35(b).

(5) We find no merit to the appeal. We review the Superior Court’s denial of a motion for modification of sentence for abuse of discretion.³ The Superior Court did not err by treating the motion as an untimely motion for sentence modification under Rule 35(b), because “there is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.”⁴ Under Rule 35(b), a motion for reduction or modification of sentence must be filed within ninety days of sentencing, absent a showing of “extraordinary circumstances.”⁵ Moreover, the “court will not consider repetitive requests for reduction of sentence.”⁶ Fidalgo’s motion was filed well beyond the ninety-day limit, and the Superior Court did not abuse its discretion by finding that the sentence was appropriate and that Fidalgo had not shown extraordinary circumstances warranting modification.

³ *Benge v. State*, 101 A.3d 973, 976-77 (Del. 2014).

⁴ *Navarro v. State*, 2020 WL 6281270, at *1 (Del. Oct. 26, 2020) (alteration omitted); *see also id.* (“Accordingly, the Superior Court did not abuse its discretion in treating the appellant’s ‘Motion to Run Level V Sentences Concurrently’ as an untimely-filed motion for sentence modification under Superior Court Criminal Rule 35(b).”); *Fountain v. State*, 139 A.3d 837, 842 (Del. 2016) (explaining that the only mechanism for a defendant to seek to change previously-imposed consecutive sentences to concurrent ones is a motion under Rule 35(b)).

⁵ DEL. SUPER. CT. R. CRIM. PROC. 35(b).

⁶ *Id.*

NOW, THEREFORE, IT IS ORDERED that the Motion to Affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice