

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEX GENTIEU,	§
	§
Defendant Below-	§ No. 485, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0809003823
Plaintiff Below-	§
Appellee.	§

Submitted: January 9, 2012
Decided: February 6, 2012

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

ORDER

This 6th day of February 2012, upon consideration of appellant’s opening brief and the State’s motion to affirm, it appears to the Court that:

(1) The appellant, Alex Gentieu, filed this appeal from a Superior Court judgment 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 Gentieu’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in April 2009, Gentieu pled guilty to trafficking in cocaine and related offenses. The Superior Court immediately sentenced Gentieu to serve a total period of twenty-five years at Level V

incarceration, to be suspended after serving seven years for decreasing levels of supervision. One of the conditions of the sentence ordered that Gentieu have no contact with his codefendant, Nicole Moses. On August 1, 2011, Gentieu filed a motion for modification of sentence asking that the no contact order with Moses be lifted. The Superior Court denied his motion on the ground that it was untimely and because his sentence was appropriate. This appeal followed.

(3) In his opening brief on appeal, Gentieu contends that the Superior Court lacked jurisdiction to impose a sentence for a drug offense that denies him the right to have contact with the mother of his child. According to Gentieu, no court should have the power to deny parents the right to raise their child together unless one or both of the parents has been proven to have abused the child.

(4) We review the Superior Court's denial of a motion for modification of sentence under Superior Court Criminal Rule 35(b) for abuse of discretion.¹ As Gentieu acknowledges, the Superior Court has discretion to impose conditions on a sentence, if the trial court deems the conditions necessary to ensure the safety of the public.² Those conditions may include ordering a defendant to engage in, or to refrain from engaging

¹ *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002)

² DEL. CODE ANN. tit. 11, § 4204(m) (2007).

in, specific acts.³ In this case, Gentieu was convicted of conspiring with his codefendant to engage in criminal conduct. The Superior Court's condition that Gentieu have no contact with his codefendant was reasonable. The condition does not prohibit Gentieu from having contact with his child and does not, as he suggests, infringe on his constitutional rights as a parent.

(5) Under the circumstances, we find no abuse of the Superior Court's discretion in denying Gentieu's motion for sentence modification as untimely. Gentieu filed his motion more than two years after he was sentenced, and he failed to establish extraordinary circumstances to excuse his untimely filing.⁴

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

BY THE COURT:

/s/ Carolyn Berger
Justice

³ *Id.*

⁴ Del. Super. Ct. Crim. R. 35(b) (2012) (providing that the Superior Court will consider a sentence modification motion "made more than 90 days after the imposition of sentence only in extraordinary circumstances...")