IN THE SUPREME COURT OF THE STATE OF DELAWARE

CORNELIUS A. BRIDDELL,	§	
	§	No. 447, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1212017859
Appellee.	§	

Submitted: September 27, 2013
Decided: November 26, 2013

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

O R D E R

This 26th day of November 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Cornelius A. Briddell, filed this appeal from the Superior Court's August 7, 2013 denial of his third motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b) ("Rule 35(b)"). The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) It appears from the record that Briddell pled guilty, on April 22, 2013, to Drug Dealing plus Aggravator, a class C felony, and Resisting Arrest, a class A

misdemeanor. Briddell was sentenced as a habitual offender for the drug dealing offense to a total of two and one-half years at Level V suspended after eighteen months for one year at Level III.

(3) Briddell filed his first motion for modification of sentence on May 29, 2013. Briddell sought a sentence modification on the basis of a serious medical condition for which he was "not getting proper meds and treatment." By order dated June 4, 2013, the Superior Court denied Briddell's motion.

(4) Briddell filed his second motion for modification of sentence on July 5, 2013. Briddell again sought a modification of sentence based on the serious medical condition. By order dated July 18, 2013, the Superior Court denied Briddell's motion.

(5) Briddell filed his third motion for modification of sentence on July 26, 2013. By order dated August 7, 2013, the Superior Court denied the motion and advised Briddell that "[f]uture applications seeking a modification, reduction and/or review of sentence will be docketed and placed in the file with no response." This appeal followed.

(6) On appeal, Briddell maintains that he is entitled to a modification of sentence based on his serious medical condition, of which the "[p]rosecution and the court is and was aware during court hearings." Briddell also claims, for the first time on appeal, that he was "intimidated" by the prosecutor and "forc[ed]" to

plead guilty by his defense counsel, and that there was insufficient evidence to support the drug offense to which he pled guilty.

(7) Having carefully considered the parties' positions on appeal, the Court concludes that Briddell's claims are without merit and are otherwise unavailing. First, the Court will not consider Briddell's challenges to his guilty plea in this appeal, as Briddell did not raise those claims in his third motion for modification of sentence.[1] Second, because Briddell's third motion for sentence modification was both repetitive and untimely, the motion was properly denied by the Superior Court.[2]

(8) When, as in this case, a Rule 35(b) motion is filed more than ninety days after the sentence is imposed, the Superior Court will consider a sentence modification "only in extraordinary circumstances" or pursuant to title 11, section 4217 of the Delaware Code.[3] Section 4217 provides for a reduction of sentence on the basis of the "serious medical illness or infirmity of the offender," but only pursuant to an application by the Department of Correction for "good cause"

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[1] Del. Supr. Ct. R. 8. Indeed, Briddell's challenges to his guilty plea are not cognizable under Rule 35(b). *Tatem v. State*, 787 A.2d 80, 81-82 (Del. 2001). A motion for postconviction relief under Superior Court Criminal Rule 61 is the exclusive remedy for a person seeking to set aside a judgment of conviction. Del. Super. Ct. Crim. R. 61(a)(2).

[2] *See* Del. Super. Ct. Crim. R. 35(b) (providing that a motion must be filed within ninety days of sentence, and that the court will not consider repetitive requests).

[3] Del. Code Ann. tit. 11, § 4217 (Supp. 2013).

shown.[4] In the absence of an application by the Department of Correction, Briddell cannot expect a sentence modification under Rule 35(b) based on a serious medical condition.[5]

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/ Henry duPont Ridgely
Justice

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[4] *Id.*

[5] *See, e.g.*, *Hubbard v. State*, 2011 WL 5009772 (Del. Oct. 20, 2011) (holding that, in the absence of a certification from the Department of Correction, the Superior Court properly denied the defendant's sentence modification motion).