

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN L. STEELE,	§	
	§	No. 441, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 91009945DI
Appellee.	§	

Submitted: October 14, 2013
Decided: November 26, 2013

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

ORDER

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, Stephen L. Steele, filed this appeal from the Superior Court’s August 2, 2013 denial of his second motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b) (“Rule 35(b)"). The appellee, State of Delaware (“State”), 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.¹ We agree and affirm.

(2) On appeal, Steele argues that the Superior Court erred when denying his second motion for modification as untimely filed. The Court concludes that Steele's claim is without merit. Under Rule 35(b), Steele's second sentence modification motion, filed on July 22, 2013, from a sentence imposed on March 7, 2012, was both untimely and repetitive.² When 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, neither of which apply here. The Superior Court does not consider repetitive requests for modification of sentence.³

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/ Randy J. Holland
Justice

¹ Del. Supr. Ct. R. 25(a).\

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

³ *Id.*