

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID DEJESUS, SR.,	§
	§
Defendant Below-	§ No. 188, 2014
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1205000422
Plaintiff Below-	§
Appellee.	§

Submitted: May 20, 2014

Decided: June 10, 2014

Before **STRINE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

ORDER

This 10th day of June 2014, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, David DeJesus, filed this appeal from a Superior Court order denying his third 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 DeJesus's opening brief that his appeal is without merit. We agree and affirm.

(2) On July 2, 2013, DeJesus pled guilty to Failure to Register as a Sex Offender. The State filed a motion to declare DeJesus a habitual offender. On September 6, 2013, the Superior Court sentenced DeJesus as a habitual offender to eighteen months at Level V incarceration with credit for seventy-seven days

previously served. DeJesus did not appeal. On September 24, 2013, DeJesus filed a motion for modification of sentence, which the Superior Court denied on October 4, 2013. On October 7, 2013, DeJesus filed a motion for reduction of sentence, which the Superior Court denied. DeJesus did not appeal. On October 17, 2013, DeJesus filed a motion for correction of illegal sentence, which the Superior Court denied on November 14, 2013. Again, DeJesus did not appeal. On March 24, 2014, DeJesus filed another motion for reduction of sentence, which the Superior Court denied because it was both untimely and repetitive. This appeal followed.

(3) In his one-page opening brief on appeal, DeJesus contends that he has filed a medical malpractice lawsuit against prison doctors. He asks the Court to release him for time served before his scheduled release date of July 23, 2014 so that he might seek proper medical care.

(4) It is conceivable that a prisoner could allege circumstances in a civil complaint that could lead to an injunction hearing to address a compelling need for immediate medical attention. But DeJesus's assertions, provide no basis for this Court to reverse the Superior Court's denial of his motion for modification of sentence. Under Superior Court Criminal 35(b), a motion for reduction of sentence must be filed within 90 days of sentencing unless the defendant can establish extraordinary circumstances.¹ Rule 35(b) also provides that the Superior Court

¹ Del. Super. Ct. Crim. R. 35(b) (2014).

will not consider repetitive requests for sentence modification.² This was DeJesus's third motion for modification of sentence, and it was filed more than 90 days after he was originally sentenced. We find no abuse of the Superior Court's discretion in denying DeJesus's untimely and repetitive motion for modification of sentence.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² *Id.*