

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID JENKINS,	§
	§
Defendant Below-	§ No. 594, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0104000981
Plaintiff Below-	§
Appellee.	§

Submitted: April 25, 2008

Decided: July 14, 2008

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 14th day of July 2008, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, David Jenkins, filed this appeal from the Superior Court's denial of his motion for modification of sentence. Jenkins filed the motion requesting the Superior Court to modify his 2005 sentence for a violation of probation (VOP) by reducing the Level V portion of his sentence and reducing his hold level from Level V to Level III pending space availability at Level IV. This was Jenkins second motion for modification of sentence. The Superior Court denied his first motion as untimely in May 2007. Jenkins did not appeal from that decision.

(2) Absent extraordinary circumstances, a motion for reduction of sentence under Superior Court Criminal Rule 35(b) must be filed within 90 days of sentencing.¹ Moreover, Rule 35(b) also prohibits the filing of repetitive sentence reduction motions. After careful consideration, we find it manifest that the judgment below should be affirmed. It is clear that Jenkins' motion was both repetitive and untimely.² We find no abuse of the Superior Court's discretion in denying Jenkins' motion.³

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ *Defoe v. State*, 750 A.2d 1200, 1202 (Del. 2000).

² Del. Super. Ct. Crim. R. 35(b) (2008) (providing that motions for modification of sentence must be filed within 90 days of sentencing and that the Superior Court will not consider repetitive requests).

³ See *State v. Lewis*, 797 A.2d 1198, 1201 (Del. 2002) (sentence modification motions are within the trial court's sound discretion).