

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH BATCHELOR,	§
	§
Defendant Below-	§ No. 424, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 1001011823
Plaintiff Below-	§
Appellee.	§

Submitted: December 16, 2011

Decided: February 8, 2012

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

**ORDER**

This 8<sup>th</sup> 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, Ralph Batchelor, filed this appeal from a Superior Court order denying his second 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 Batchelor’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Batchelor pled guilty on September 22, 2010 to DUI (fourth offense) and second degree reckless endangering. The Superior Court immediately sentenced him to pay a \$3000 fine and: (i) on

the DUI, to serve five years at Level V to be suspended after serving six months and upon successful completion of the Level V Tempo class for eighteen months at Level III probation; and (ii) on the reckless endangering charge, to serve one year at Level V to be suspended entirely for one year at Level III probation. Batchelor was ordered to report on December 15, 2010 to begin serving his sentence because of a scheduled surgery on his shoulder.

(3) On November 5, 2010, while he was on Level IV home confinement awaiting his December report date, Batchelor was charged with a violation of probation. The Superior Court held a hearing and found Batchelor had violated his probation. The court sentenced Batchelor as follows: (i) on the DUI, to five years at Level V incarceration, with credit for eight days previously served, to be suspended after serving one year and upon successful completion of the Key Program for completion of a Level IV residential drug treatment program followed by eighteen months at Level III Aftercare; and (ii) for reckless endangering, to one year at Level V incarceration to be suspended entirely for one year at Level III Aftercare.

(4) On February 11, 2011, Batchelor, through his counsel, filed a motion for modification of sentence, which the Superior Court denied. On July 7, 2011, Batchelor filed a second motion for modification. Batchelor requested the Superior Court to modify his sentence by suspending the

remainder of his Level V time upon his successful completion of the Key Program and also to delete the requirement that he participate in the Crest treatment program so that he instead could begin intensive physical therapy for his shoulder, which he “believed” would salvage his arm. No medical documentation was provided to support the request. On July 13, 2011, the Superior Court held that Batchelor’s “belief” about the need for physical therapy was not a basis for sentence modification and that Batchelor’s history of repeated DUIs dictated the need for the Key-Crest continuum for treatment of Batchelor’s alcohol problem. This appeal followed.

(5) After careful consideration, we find no merit to Batchelor’s appeal. Batchelor’s contention that he is physically unable to participate in the work release portion of the Crest Program is unsubstantiated in the record. We find no abuse of the Superior Court’s discretion in denying Batchelor’s motion for sentence modification on this ground.<sup>1</sup>

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>1</sup> See *Aiken v. State*, 2011 WL 4375252 (Del. Sept. 11, 2011).