

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM T. HALEY,	§
	§ No. 578, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1008024002
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 19, 2011

Decided: February 8, 2012

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

ORDER

This 8th day of February 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, William T. Haley, filed an appeal from the Superior Court's October 4, 2011 order denying Haley's second motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the 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.¹ We agree and affirm.

(2) The record before us reflects that, in February 2011, Haley pleaded guilty to a fourth offense of Driving Under the Influence ("DUI") and Felony Reckless Endangering in connection with a car accident in which Haley struck a car containing a father and his two children. On May 13, 2011, Haley was sentenced to a total of 10 years of Level V incarceration, to be suspended after 6 years and successful completion of the Key Program, to be followed by 2 years at Level IV Crest Program, in turn to be followed, after successful completion of the program, by Level III Crest Aftercare.

(3) Haley filed his first request for sentence modification on June 22, 2011. The Superior Court denied the motion on June 30, 2011, citing the danger Haley posed to the community. On September 29, 2011, Haley filed a motion for leave to file a motion for sentence modification on medical grounds, which the Superior Court deemed to be Haley's second motion for sentence modification under Rule 35(b). The Superior Court denied the motion on October 4, 2011.

(4) In his appeal, Haley claims that the Superior Court abused its discretion by denying his motion without any consideration of his alleged

¹ Supr. Ct. R. 25(a).

medical issues. The medical issues to which Haley refers consist of “a host of serious illnesses” including severe liver disease. Haley alleges that, because of his illnesses, he has a very short life expectancy. Haley also claims that his counsel failed to mention his medical condition as a mitigating factor at sentencing and that the sentencing judge was biased against him because he was personally familiar with the individual driving the other car involved in the accident.

(5) After reviewing the record in this case, we conclude that Haley’s request to file a second motion for sentence modification under Rule 35(b) was appropriately deemed by the Superior Court to be his second such motion. The “request” contained detailed information concerning his medical condition and family situation---in short, the “extraordinary circumstances” he needed to allege for a sentence modification under Rule 35(b). There is no evidence in the record that the Superior Court failed to consider those allegations when it denied Haley’s motion, as he claims. We, therefore, find no support for Haley’s claim of an abuse of discretion on the part of the Superior Court.

(6) Haley’s claim that his counsel failed to present mitigating factors at his sentencing is essentially a claim of ineffective assistance of counsel. Such a claim is not properly presented in a Rule 35 proceeding and

we, therefore, decline to address it. Even assuming that Haley's additional claim of bias on the part of the sentencing judge is properly before us, his failure to provide a copy of the transcript of the sentencing hearing precludes our appellate review of that claim.²

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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

² *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).