IN THE SUPREME COURT OF THE STATE OF DELAWARE

GWENDOLYN S. WALLACE,	§	
	§	No. 478, 2013
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1203000756
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 10, 2013
Decided: February 17, 2014

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

O R D E R

This 17th day of February 2014, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Gwendolyn S. Wallace, filed this appeal from the Superior Court's August 16, 2013 denial of her 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) The record reflects that on August 1, 2012, Wallace pled guilty to drug dealing and was sentenced to fifteen years at Level V, suspended after ninety days for six months at Level IV home confinement, followed by one year at Level III probation.[2] Thereafter, on May 6, 2013, Wallace was charged by administrative warrant with a violation of probation ("VOP").

(3) At a May 17, 2013 hearing, the Superior Court found Wallace guilty of VOP and resentenced her to fourteen years and three months at Level V, suspended after one year for eighteen months of probation. Wallace's appeal from the May 17, 2013 VOP conviction and sentence was dismissed as untimely filed.[3]

(4) On July 8, 2013, moved to modify the May 17, 2013 VOP sentence. By order dated August 16, 2013, the Superior Court denied that motion as without merit. This appeal followed.

(5) On appeal, Wallace devotes most of her opening brief to resurrecting substantive claims arising from the May 17, 2013 VOP

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[1] DEL. SUPR. CT. R. 25(a).

[2] The sentence was modified on February 13, 2013, when a home confinement location could not be found.

[3] *Wallace v. State*, 2013 WL 3788240 (Del. July 16, 2013).

proceeding. Claims arising from the VOP proceeding are procedurally improper on appeal from a denial of a motion for modification of sentence.[4]

(6) This Court reviews the Superior Court's denial of a modification of sentence for abuse of discretion.[5] Here, the Superior Court's August 16, 2013 denial of Wallace's motion for modification of sentence was not an 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/ Jack B. Jacobs
Justice

[4] *See, e.g., Sewell v. State*, 2003 WL 22839962, at *1 (Del. Nov. 26, 2003) (concluding that right to counsel claim arising from prior, appealable 2001 VOP adjudication was not justiciable in subsequent 2003 appeal from denial of sentence modification motion); *Strawley v. State*, 2002 WL 86687, at *2 (Del. Jan. 15, 2002) (concluding that challenge from prior, appealable VOP proceeding was untimely in subsequent appeal from denial of sentence correction motion) (citing *Carr v. State*, 554 A.2d 778 (Del. 1989).

[5] *Shy v. State*, 246 A.2d 926, 927 (Del. 1968).