

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN MELVIN,	§
	§ No. 22, 2021
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID No. 0509002163 (S)
Plaintiff Below,	§
Appellee.	§

Submitted: May 10, 2021

Decided: June 29, 2021

Before **SEITZ**, Chief Justice; **TRAYNOR** and **MONTGOMERY-REEVES**, Justices.

**ORDER**

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

(1) Brian Melvin appeals the Superior Court’s January 11, 2021 order denying his motion for sentence modification. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Melvin’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that in June 2008 Melvin entered a no-contest plea to one count of first-degree rape. The Superior Court immediately sentenced Melvin in accordance with the plea agreement to fifteen years of Level V incarceration

followed by ten years of Level III probation. Shortly thereafter, Melvin filed a motion to withdraw his guilty plea, which the Superior Court denied. We upheld the Superior Court's denial of Melvin's motion to withdraw his guilty plea as well as Melvin's conviction and sentence on direct appeal.<sup>1</sup>

(3) On December 11, 2020, Melvin filed a "Rule to Show Cause as to Modification, Deferral, Suppression or Reduction of Sentence for Serious Physical Illness, Injury or Infirmary," asking the court to immediately release him to Level III probation or home confinement. Invoking 11 *Del. C.* § 4301<sup>2</sup> as well as the Eighth and Fourteenth Amendments, Melvin sought sentence modification because, among other things, the Department of Correction has curtailed the ability of prisoners to participate in rehabilitation programs as a result of the COVID-19 pandemic and his underlying health conditions place him at an increased risk of suffering from COVID-19 complications. The Superior Court considered Melvin's motion under Superior Court Criminal Rule 35(b) and denied it, finding that Melvin's sentence was reasonable and appropriate for the reasons stated at sentencing and that no

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<sup>1</sup> *Melvin v. State*, 2009 WL 353293 (Del. Feb. 12, 2009).

<sup>2</sup> Among other things, Section 4301 directs the Superior Court to fashion a defendant's sentence with the defendant's individual characteristics and needs in mind and, when desirable, to favor supervised release over Level V incarceration.

extraordinary circumstances excused the untimely motion for sentence modification. This appeal followed.

(4) On appeal, Melvin’s arguments may be fairly summarized as follows: (i) the Superior Court improperly considered his motion to be a motion for sentence modification filed under Rule 35(b); (ii) the Superior Court impermissibly ruled on the motion without requiring the State to address the merits of the motion; and (iii) the Superior Court abused its discretion in denying the motion because the Superior Court “ignored” the substance of Melvin’s motion. Melvin’s arguments are unavailing.

(5) First, Melvin’s motion specifically sought the modification of his sentence, and we have previously observed that “[t]here is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.”<sup>3</sup> Consequently, the Superior Court properly reviewed Melvin’s motion under Rule 35(b).<sup>4</sup> And because the Superior Court properly treated Melvin’s motion as a Rule 35(b) motion, his second claim must also fail: Rule 35 specifically provides that, “A motion for reduction of sentence will be

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<sup>3</sup> *Jones v. State*, 2003 WL 21210348, at \*1 (Del. May 22, 2003).

<sup>4</sup> For the first time on appeal, Melvin cites 11 *Del. C.* § 4221 in support of his motion for sentence modification. But Section 4221 allows the trial court to modify or reduce a minimum or mandatory sentence of one year or less under certain circumstances. It is not applicable here, where Melvin is serving a fifteen-year minimum mandatory sentence.

considered without presentation, hearing or argument unless otherwise ordered by the court.”<sup>5</sup>

(6) As Melvin observes, we review the Superior Court’s denial of a Rule 35(b) motion for abuse of discretion.<sup>6</sup> Rule 35(b) provides that a motion for sentence modification filed after ninety days will only be considered in extraordinary circumstances or under 11 *Del. C.* § 4217.<sup>7</sup> “In order to uphold the finality of judgments, a heavy burden is placed on the defendant to prove extraordinary circumstances when a Rule 35 motion is filed outside of ninety days of imposition of a sentence.”<sup>8</sup> We can discern no error or abuse of discretion in the Superior Court’s denial of Melvin’s motion. We have previously determined that the question of whether the early release of any particular prisoner is warranted in light of the dangers posed to him by COVID-19 is best left to the discretion of the Department of Corrections, which may move for the modification of any offender’s sentence for good cause—including the offender’s medical illness or infirmity—under Section

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<sup>5</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>6</sup> *Benge v. State*, 101 A.3d 973, 976-77 (Del. 2014).

<sup>7</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>8</sup> *State v. Culp*, 152 A.3d 141, 145 (Del. 2016) (internal quotation marks and citations omitted).

4217.<sup>9</sup> And we conclude that the Superior Court’s order, albeit brief, adequately set forth its reasoning for denying Melvin’s motion for sentence modification.<sup>10</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves  
Justice

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<sup>9</sup> *Johnson v. State*, 2020 WL 5626231, at \*2 (Del. Sept. 18, 2020) (recognizing that Section 4217 is the statutory vehicle for seeking sentence modification in light of an offender’s underlying medical conditions and potential exposure to COVID-19).

<sup>10</sup> We note that the cases on which Melvin relied in the Superior Court in support of his constitutional arguments relate to the civil liability prison officials face for their deliberative indifference to the serious medical needs of prisoners in the civil-rights context; they do not relate to whether the reduction or modification of a prisoner’s sentence is warranted or appropriate because of any such alleged indifference. *See Drummond v. State*, 2021 WL 2418977, at \*2 n. 4 (Del. June 11, 2021) (citing cases).