

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HILTON HOSKINS,	§
	§
Defendant Below-	§ No. 16, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County,
	§ Cr.A. Nos. IK96-07-0117
Plaintiff Below-	§ and -0118
Appellee.	§

Submitted: February 7, 2000

Decided: March 1, 2000

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

**ORDER**

This 1st day of March 2000, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Hilton Hoskins, filed this appeal from a Superior Court order denying Hoskins's fifth motion for modification of sentence. The State has moved to affirm the Superior Court's judgment on the ground that it was not an abuse of the Superior Court's discretion to deny Hoskins's motion as repetitive. *See* Super. Ct. Crim. R. 35(b).

(2) The record reflects that Hoskins pled guilty, pursuant to Superior Court Criminal Rule 11(e)(1)(C), on December 3, 1996 to the lesser included offense of attempted cocaine delivery in lieu of the original charge of cocaine delivery. He was sentenced in accordance with the plea agreement to 3 years Level V imprisonment, followed by 6 months Level IV halfway house, 6 months Level III probation and 6 months Level II probation. Despite this agreement and four previous denials of similar motions by the Superior Court, Hoskins again filed a sentence modification motion on December 12, 1999. His latest motion requested that the halfway house sentence be changed to home confinement only. Although the State did not oppose this request, the Superior Court deemed it a repetitive motion in violation of Rule 35(b) and denied it.

(3) This Court's review of a decision by the Superior Court denying a motion for sentence modification is limited to whether that court abused its discretion. *See Mayes v. State*, Del. Supr., 604 A.2d 839, 842-43 (1992). Where a defendant fails to show that the sentencing court relied on constitutionally unreliable information, a court neither commits legal error nor

abuses its discretion in denying a defendant's motion for a reduction of sentence. *Id.* at 843.

(4) In this case the appellant has failed to present any information to this Court indicating that the sentencing court relied on constitutionally unreliable information during the sentencing process. Accordingly, the Superior Court's denial of Hoskins' repetitive motion was not an abuse of discretion by that court. In addition, although not mentioned by the Superior Court in its order, it appears that Hoskins' latest motion for modification of sentence is also untimely, having been submitted well after the 90 day time limit of Rule 35(b).

(5) Consequently, it is manifest to the Court that the State's motion to affirm should be granted. The issue presented is one of judicial discretion, and clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

          s /Joseph T. Walsh  
Justice