

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AARON FASSETT a/k/a	§	
JOHN C. STEVENS,	§	No. 156, 2011
	§	
Defendant Below,	§	Court Below–Superior Court
Appellant,	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0707039545
Appellee.	§	

Submitted: May 6, 2011
Decided: June 27, 2011

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

ORDER

This 27th day of June 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Aaron Fassett a/k/a John C. Stevens (“Fassett”), filed this appeal from the Superior Court’s March 17, 2011 denial of his 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. 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.²

(2) It appears that Fassett pled guilty on September 29, 2009, to one count of misdemeanor theft and was sentenced. The plea and sentencing forms signed by Fassett reflect that the State recommended the statutorily-authorized sentence of one year at Level V suspended for one year at Level III probation.³ The Superior Court sentenced Fassett to one year at Level V suspended for one year at Level II probation (“the original sentence”).⁴

(3) On September 22, 2010, Fassett was charged with violation of probation (“VOP”). After a hearing on October 13, 2010, Fassett was found guilty of VOP and was sentenced.

(4) On February 17, 2011, Fassett filed a motion for modification of the original sentence. Fassett alleged that he did not have a case review prior to his September 2009 guilty plea, that his defense counsel was

¹ Del. Supr. Ct. R. 25(a).

² *Id.*

³ See Del. Code Ann. tit. 11, §§ 841, 4206 (authorizing sentence of up to one year at Level V for misdemeanor theft).

⁴ Thereafter, on June 9, 2010, the Superior Court added a special condition to Fassett’s probation, *i.e.*, that he submit to a substance abuse evaluation and comply with all treatment recommendations. See docket at 18, *State v. Stevens*, Del. Super., Cr. ID No. 0707039545 (June 9, 2010) (order imposing special condition to probationary sentence).

ineffective, and that the original sentence exceeded SENTAC guidelines.⁵ By order dated March 17, 2011, the Superior Court denied Fassett's motion. This appeal followed.

(5) On appeal, Fassett raises only the SENTAC claim.⁶ He also alleges two new claims, *i.e.*, that the Office of Public Defender failed to fulfill a continuing obligation to assist him in obtaining a sentence modification, and that the sentencing judge was biased and had a conflict of interest ("Fassett's new claims").⁷

(6) Generally, absent plain error, the Court will not review a claim on appeal that was not presented to the trial court.⁸ In this case, neither of Fassett's new claims raises plain error; accordingly, Fassett's new claims will not be reviewed as part of this appeal.⁹

⁵ See SENTAC (Delaware Sentencing Accountability Commission) Benchbook at 75 (2011) (listing presumptive sentences for class A misdemeanors involving property).

⁶ Fassett's remaining claims, namely that his defense counsel was ineffective and that he did not have a case review, are deemed waived and will not be addressed by the Court. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

⁷ The record reflects that the same Superior Court judge imposed the original sentence and the VOP sentence.

⁸ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

⁹ "Under the 'plain error' doctrine, we are 'limited to material defects which are apparent on the face of the record, which are basic, serious, and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.'" See *Jenkins v. State*, 8 A.3d 1147, 1152 (Del. 2010) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).

(7) This Court reviews the Superior Court's denial of a motion for modification of sentence for abuse of discretion.¹⁰ In this case, the Superior Court reexamined the VOP sentence imposed on October 13, 2010 and properly determined, in the exercise of its discretion, that the sentence was appropriate.

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/ Carolyn Berger
Justice

¹⁰ *Hickman v. State*, 2003 WL 22669335 (Del. Supr.) (citing *Shy v. State*, 246 A.2d 926, 927 (Del. 1968)).