

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE T. LAVALLEY,	§
	§ No. 622, 2007
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ C.A. No. 07M-05-072
	§
Respondent Below-	§
Appellee.	§

Submitted: February 7, 2008

Decided: March 7, 2008

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

ORDER

This 7th day of March 2008, 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, Lawrence T. Lavalley, filed an appeal from the Superior Court's November 7, 2007 order denying his motion for reargument of the denial of his petition for a writ of mandamus. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In May 1989, Lavalley pleaded guilty to Robbery in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 40 years incarceration at Level V, to be suspended after 35 years for decreasing levels of supervision. Lavalley did not file a direct appeal of his convictions and sentences.

(3) In June 1990, Lavalley pleaded guilty to another count of Robbery in the First Degree and was sentenced to an additional 12 years of Level V incarceration. Lavalley also did not appeal from that conviction and sentence.

(4) In January 2007, Lavalley petitioned the Superior Court for a writ of mandamus. He sought to have the Superior Court direct the Department of Correction (“DOC”) to consider his request for a sentence modification under Del. Code Ann. tit. 11, § 4217. Lavalley asked the Superior Court to answer four questions regarding the applicability of Section 4217 to pre-TIS sentenced inmates.

(5) On October 16, 2007, the Superior Court denied the petition on the ground that mandamus is inappropriate because Section 4217 does not impose a non-discretionary duty upon the DOC. On November 7, 2007, Lavalley filed a motion for reargument, which requested the Superior Court to answer the question whether Section 4217 pertains to TIS and pre-TIS

sentenced inmates alike. Thereafter, the Superior Court denied the motion on the substantive ground that mandamus was not the proper vehicle to obtain the relief sought by Lavalley.

(6) In this appeal, Lavalley claims that the Superior Court abused its discretion when it declined to answer his request to verify that non-TIS sentenced inmates may initiate the process of sentence modification under Section 4217.

(7) A motion for reargument must be filed within 5 days of the Superior Court's decision.¹ Because the Superior Court's order denying Lavalley's petition for a writ of mandamus was docketed on October 16, 2007, a timely motion for reargument had to be filed no later than October 23, 2007.² The Superior Court docket reflects that Lavalley's motion for reargument was not filed until November 7, 2007. As such, the motion was untimely and the Superior Court was not required to consider the motion.

(8) We, thus, conclude that the motion for reargument was properly denied.

(9) 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

¹ Super. Ct. Civ. R. 59(e).

² Super. Ct. Civ. R. 6(a).

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/ Jack B. Jacobs
Justice