

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
)
 v.) Case ID#: 0212002900
)
)
 STEPHON DESHIELDS,)
)
)
 Defendant.)

ORDER

AND NOW TO WIT, this 26th day of January, 2017, upon consideration of Defendant’s Motion for Modification of Sentence under Superior Court Criminal Rule 35, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On January 27, 2003, Defendant was indicted by a Grand Jury of Murder in the First Degree, five counts of Possession of a Firearm During the Commission of a Felony, two counts of Assault in the Second Degree, Conspiracy in the First and Second Degree, Carjacking in the First Degree, Robbery in the First Degree, and Possession of a Firearm by a Person Prohibited.
2. These offenses involved the death of a 23 year-old father, Damien Williams. Mr. Williams was the oldest and only son of the Williams family. He

was a Brandywine High School graduate who appeared to have a promising future. He was the father of two young boys and took his parenting responsibilities seriously. He called his mother almost every day. He completed a training program at Connective and had held employment with an insurance company, produced a music CD, owned a car and had purchased his first home at age 21.

3. On November 20, 2002, Defendant and two other men were involved in a carjacking incident. Mr. Williams was a friend of the carjacking victim and he responded to his friend's call to help the victim find his car. When he arrived in the area of 5th and Monroe to help his friend, Mr. Williams and two others stood in the center of the block when gunshots erupted. Defenseless, they ran down Carpenter Street to find shelter from the hail of gunfire. Mr. Williams was struck in the chest and the leg. He managed to make it to Adams Street where he collapsed. He was pronounced dead shortly thereafter. He had no relationship to Defendant.

4. In January 2004, Defendant pleaded guilty to Manslaughter as a lesser-included offense of Murder in the First Degree, and to Possession of a Deadly Weapon During the Commission of a Felony ("PDWDCF"). On February 27, 2004, he was sentenced to seventeen years at Level V incarceration with periods of probation to follow; seven for the Manslaughter and ten for the

PDWDCF. This sentence ran consecutively to a previous four-year sentence that Defendant was serving at the time of his sentencing on these charges.

5. In the instant Motion, Defendant seeks to reduce his sentence pursuant to Superior Court Criminal Rule 35(b).¹ Under this Rule, the Court may reduce a sentence of imprisonment upon a motion made within 90 days after the sentence is imposed. Defendant's Motion was filed more than 90 days after imposition of the sentence and is, therefore, time-barred.

6. The prior sentencing judge and this Court have previously considered and denied Defendant's Rule 35 applications. In the present Motion, Defendant argues that Senate Bill #163 meets the "extraordinary circumstances" provision of Rule 35(b) to warrant a reduction of his PDWDCF sentence.² Defendant contends that when the sentencing judge imposed a ten-year sentence on the PDWDCF, he considered Defendant's prior juvenile drug adjudication of Possession With Intent to Deliver ("PWITD") as a violent felony to enhance the sentence to ten years and argues that Senate Bill #163 has "'retroactively' declared that drug charges such as Defendant's are no longer considered 'violent' and removed from Title 16 offenses that would enhance a sentence" such that it warrants a reduction today. Defendant's argument that the provisions of Senate Bill #163 somehow qualify as

¹ DEL. SUPER. CT. CRIM. R. 35(b).

² See S.B. 163, 148th Gen. Assem. § 1 (Del. 2016) (amending 11 *Del. C.* § 4214).

“extraordinary circumstances” under Rule 35(b) is creative but unavailing and incorrect.

7. The Delaware Supreme Court has defined “extraordinary circumstances” as circumstances which: “‘specifically justify the delay;’ are ‘entirely beyond a petitioner’s control;’ and ‘have prevented the applicant from seeking the remedy on a timely basis.’”³ Senate Bill #163 does not qualify as “extraordinary circumstances” within this meaning.

8. Senate Bill #163 amends Delaware’s habitual criminal statute, 11 *Del. C.* § 4214.⁴ Section 4214(a)-(e) establishes the sentencing procedure for any person convicted of a violent felony or an attempt to commit a violent felony who has previously been convicted of some combination of felonies or violent felonies.⁵ The State must petition the Court to declare the defendant a habitual offender.⁶ Moreover, effective January 1, 2017, “any person sentenced as an habitual criminal prior to [July 19, 2016], shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of

³ *State v. Diaz*, 113 A.3d 1081, 2015 WL 1741768, at *2 (Del. 2015) (TABLE) (quoting *State v. Lewis*, 797 A.2d 1198, 1203, 1205 (Del. 2002) (Steele, C.J., dissenting)).

⁴ See Del. S.B. 163; 11 *Del. C.* § 4214 (effective July 19, 2016).

⁵ § 4214(a)-(e).

⁶ See *id.*

incarceration equal to any applicable mandatory sentence. . . .”⁷ Defendant was not sentenced as a habitual offender and, therefore, Senate Bill #163 and § 4214 are not applicable to Defendant’s Motion.

9. Defendant is reminded that Superior Court Criminal Rule 35(b) provides that: “[t]he court will not consider repetitive requests for reduction of sentence.”⁸ Unlike the 90-day jurisdictional limit with its “extraordinary circumstances” exception, the bar to repetitive motions has no exception. Instead, this bar is absolute and flatly “prohibits repetitive requests for reduction of sentence.”⁹ Accordingly, this Court does not find that Defendant’s Motion can overcome the applicable procedural bar in this case.

10. The sentence was imposed pursuant to a Plea Agreement between the State and Defendant.¹⁰ When Defendant accepted the plea offer, the record establishes he understood that on the charge of Manslaughter, he was facing statutory penalties of up to ten years in prison. He received seven. On the charge of PDWDCF, he was facing a minimum of two years and exposure to twenty

⁷ § 4214(f).

⁸ DEL. SUPER. CT. CRIM. R. 35(b).

⁹ *Thomas v. State*, 812 A.2d 900, 2002 WL 31681804, at *1 (Del. 2002) (TABLE). *See also Jenkins v. State*, 954 A.2d 910, 2008 WL 2721536, at *1 (Del. 2008) (TABLE) (Rule 35(b) “prohibits the filing of repetitive sentence reduction motions”); *Morrison v. State*, 846 A.2d 238, 2004 WL 716773, at *2 (Del. 2004) (TABLE) (defendant’s “motion was repetitive, which also precluded its consideration by the Superior Court.”).

¹⁰ *See* DEL. SUPER. CT. CRIM. R. 11(e).

years of incarceration. He received ten. The aggravators were fully set out at sentencing explaining why the sentencing judge imposed the sentence. As such, the sentence was and remains appropriate for all the reasons stated at the time of sentencing.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Defendant's Motion is **DENIED.**

IT IS SO ORDERED.



Vivian L. Medinilla
Judge

oc: Prothonotary
cc: Department of Justice
Investigative Services
Defendant