Rule 35A. Modification of sentence for an offense committed as a juvenile.

(a) Scope of rule.

(1) *Nature of proceeding.* This rule governs the procedure on an application by a person in custody under a sentence of this court imposed for an offense that was committed before the person had reached his or her eighteenth birthday seeking exercise of the court's retained jurisdiction to modify that sentence pursuant to 11 *Del. C.* § 4204A.

(2) *Exclusiveness of remedy.* A motion shall be limited to the request for modification of a sentence pursuant to 11 *Del. C.* § 4204A when that sentence was imposed for an offense that was committed before the person had reached his or her eighteenth birthday. The remedy afforded by this rule may not be sought by a motion for postconviction relief or in any manner other than as provided herein. The availability of relief under this rule, however, shall not be construed to limit the court's ability to modify a sentence pursuant to Rule 35 or 11 *Del. C.* § 4217 where the requirements thereof are met.

(b) Modification of sentence for an offense committed as a juvenile.

(1) *Form of motion.* An application under this rule shall be made by a motion for sentence modification. The motion shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the movant.

(2) *Content of motion.* The motion shall specify all the grounds for sentence modification that are available to the movant and of which the movant has or, by the exercise of reasonable diligence, should have knowledge. The motion shall set forth in summary form the facts supporting each of the grounds thus specified.

(3) *Multiple judgments of sentence.* If judgments of sentence were entered on more than one offense at the same time as for the offense that was committed before the person had reached his or her eighteenth birthday because of joinder of offenses in one indictment, in one plea of guilt, or in one trial, the movant may seek modification of each such judgment of sentence in the motion. Judgments entered at different times shall not be challenged in one motion but only by separate motions.

(4) *Time of filing.* A motion may not be filed until the time-served eligibility requirements set forth in 11 *Del. C.* § 4204A are met. The court will not consider a subsequent request for sentence modification pursuant to this rule until at least 5 years have elapsed since the date on which the court ruled upon the person's most recent

motion. The court shall have the discretion in each sentence modification proceeding to prohibit a subsequent sentence modification motion under this rule for a period of time in excess of 5 years if the court finds there to be no reasonable likelihood that the interests of justice will require another hearing within 5 years.

(5) *Place of filing.* A motion shall be filed in the office of the prothonotary in the county in which the judgment of sentence was entered and shall be served upon the office of the Attorney General in the county of application.

(c) Appointment of counsel.

The court will appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown, but not otherwise. If counsel is appointed, it shall be the duty of counsel to assist the movant in preparing and presenting any substantial factor important to the sentencing determination available to the movant. Upon entry of a final order, counsel's continuing duty shall be as provided in Supreme Court Rule 26.

(d) Proceedings on the motion.

(1) *Proceeding on motion.* A motion for reduction of sentence will be considered without presentation, hearing or argument unless otherwise ordered by the court. The court may request additional information which may include, but need not be limited to, the mitigating factors of the movant's youth at the time of the offense and the initial sentencing determination, rehabilitation of the movant, and certification by the Department of Correction that the release of the movant will not constitute a substantial risk to the community or the movant's ownself. The court shall not act upon the application without first providing the Attorney General with a reasonable period of time to be heard on the matter.

(2) *Disposition of motion.* The court may in its sole discretion grant or deny the motion for modification of sentence. Notwithstanding the provisions of 11 *Del. C.* § 4205 or § 4217, any court rule or any other provision of law to the contrary, the court upon consideration of a motion properly filed pursuant to this rule may modify, reduce or suspend such movant's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the court. Nothing in this rule or in 11 *Del. C.* § 4204A, however, shall require the court to grant sentence modification to a movant.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ORDER ADOPTING RULE 35A
OF THE
SUPERIOR COURT RULES OF CRIMINAL PROCEDURE

This 6th day of JAN, ~~2013~~ 2014, **IT IS ORDERED** that:

(1) The annexed Rule 35A of the Superior Court Rules of Criminal Procedure is hereby adopted.

(2) This Order is effective immediately and the rule adopted hereby shall be applicable to any person serving a sentence of imprisonment that may be subject to modification pursuant to 11 *Del. C.* § 4204A, regardless of whether such offense was committed prior to or after adoption of Rule 35A.

(3) An original of this Order shall be filed with the Prothonotary for each county.

President Judge

Judge

Judge

Richard R. Cook
Judge

Judge

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