

**THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
)	
v.)	ID#: 0008014266
)	IN-00-09-0382-R1, 0383-R1,
DERRICK L. JACKSON,)	0385-R1, 0386-R1
Defendant.)	
)	

ORDER

**Upon Department of Correction’s Motion for
Modification of Sentence – *DENIED*.**

1. After a jury convicted Defendant in October 2001 of two counts of Burglary Second Degree and two thefts, the court declared Defendant a habitual offender under 11 *Del. C* §4214 (a), and it sentenced him to ten years in prison for each burglary and probation for the thefts. Because the burglary sentences were under 11 *Del. C* §4214 (a), they are mandatory sentences.

2. After Defendant had served approximately 11 years of the 20 year, mandatory sentence, the Department of Correction moved that Defendant be resentenced to 20 years in prison, suspended after he successfully completed the KEY, in-custody drug program, followed by Level 4 CREST, and so on.

3. The Board of Parole found that the motion was consistent with 11 *Del. C* §4217. Among other things, the Board specifically found that releasing Defendant to community-based supervision would not constitute a substantial risk to the community or Defendant.

4. On June 21, 2012, the Board filed a motion to modify Defendant's sentence. The Department of Justice, headed by the Attorney General, opposed the Board's motion, contending that a sentence under the habitual offender statute was not subject to reduction under 11 *Del. C* § 4217.

5. In light of the legal disagreement between two State agencies, the court ordered Department of Correction's counsel to respond to the prosecutor's position.

6. Apparently, the Attorney General sided internally with the Criminal Division. Accordingly, on September 28, 2012, the Department of Correction, through its assigned deputy attorney general, advised the court that after review of *State v. Sturgis*,¹ the statute's language and the pleadings, "DOC agrees that Defendant Jackson must first complete his minimum-mandatory sentence before he can become eligible for a sentence modification pursuant to 11 *Del. C* §4217." The Department of Correction now concludes that "even if [Defendant's] behavior and

¹ 947 A.2d 1087 (Del. 2008).

progress might merit it, such selection [for modification under 11 *Del. C* §4217] was premature and contrary to the law.”

7. Although Defendant was not a moving party, on October 12, 2012 the court gave him leave to respond by November 2, 2012. Defendant did not respond.

8. The court views the September 28, 2012 letter from the Department of Correction either as a request to withdraw the motion for modification or as a voluntary dismissal.

The Prothonotary **SHALL** mark the docket to show that Department of Correction modification of sentence is withdrawn or voluntarily dismissed as of this order’s date.

IT IS SO ORDERED.

Date: February 28, 2013 _____ /s/ Fred S. Silverman
Judge

oc: Prothonotary (Criminal)
Aaron R. Goldstein, Deputy Attorney General
Stacey Cohee, Deputy Attorney General
Daniel Simmons, Deputy Attorney General
David Henderson, Chairperson, Board of Parole
Derrick L. Jackson, Defendant