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

STATE OF DELAWARE)	
V.)	Case No. 1102013155
JAMES H. ELLIOTT,)	
Defendant.)	

ORDER DENYING MOTION FOR MODIFICATION OF SENTENCE OF JAMES H. ELLIOTT

Upon consideration of the Motion for Sentence Correction (the "Motion to Modify") filed by James H. Elliott, the documents filed in support of the Motion to Modify, the letter dated March 28, 2013 from Cynthia L. Faraone, Esq., Deputy Attorney General, to the Honorable Eric M. Davis (the "Response"), the authorities provided by the parties in the Motion to Modify and the Response, the record of this criminal action, and the Court determining (i) that no hearing is necessary and (ii) that Mr. Elliott has failed to demonstrate good cause for the relief requested,

IT IS FOUND AND DETERMINED that 11 Del. C. § 1447A(e) expressly provides that the person convicted of "possession of a firearm during commission of a felony" shall then serve the sentence for the felony committed before serving the sentence for the possession charge; and

IT IS FURTHER FOUND AND DETERMINED that, as a preliminary matter, 11 Del. C. §4217 does not apply as Mr. Elliott has failed to satisfy the requirements of 11 Del. C. § 4217(b) and, therefore, any request predicated on this section of the Delaware Code must be summarily dismissed; and

IT IS FURTHER FOUND AND DETERMINED that Mr. Elliott has failed to

demonstrate the sentence imposed in this criminal action is an illegal sentence subject to

modification under Superior Court Criminal Rule 35(a); and

IT IS FURTHER FOUND AND DETERMINED that Mr. Elliott has failed to

demonstrate "extraordinary circumstances" as required under Superior Court Criminal Rule 35;

and

IT IS HEREBY ORDERED, this 5th day of April, 2013, that the Motion to Modify is

DENIED.

/s/Eric M. Davis

Eric M. Davis Judge

cc: Prothonotary

Michael W. Modica, Esq. Cynthia L. Faraone, Esq.