

in the first degree, weapon offenses, and other crimes. He was sentenced to 37 years in prison, 23 of which are mandatory, followed by probation. Thus, Defendant has been in prison since late-1996.

3. Since then, Defendant has filed motions for sentence reduction. Due to the time-gone-by, the court has been reluctant to step-in. It has encouraged Defendant to apply for relief through 11 *Del. C.* §4217.² On February 27, 2012, Defendant filed this renewed motion for reconsideration. The motion, itself, is substantial. Attached to it are letters of recommendation. The motion and accompanying documents suggested Defendant has grown a lot and justified follow-up. On March 14, 2012, the court called for the Attorney General's and the Department of Correction's responses.

4. On April 18, 2012, the Attorney General filed a letter vividly reminding the court about Defendant's violent history in this case and others. The Attorney General acknowledges Defendant's letters of recommendation, and opines Defendant is "a very intelligent individual [and] he has succeeded" in prison. The Attorney General implies, however, that Defendant is anti-social and his success in prison is only attributable to having been in a "controlled environment so

² See October 27, 2010 order ("Mr. Middlebrook - taking your age and its seriousness into account, the court is interested in DOC's assessment. You should apply under 11 *Del. C.* §4217. If DOC will stand up for you, that will be important.")

professionally provided by the Department of Correction[].” The Attorney General’s concerns cannot be dismissed lightly. The last time Defendant was on his own, albeit 16 years ago, he was truly a menace.

5. The Department of Correction responded by letter dated April 10, 2012. Clearly, DOC took the court’s inquiry seriously, reporting that while Defendant has not been perfect, he “has not been idle, or passive in developing socially acceptable changes in his character.” In summary, DOC’s assessment is highly favorable.

6. Unfortunately, DOC falls short of actually making a recommendation, referring to Defendant’s correctional rehabilitation as an “on-going work in-progress.” DOC concludes that Defendant’s accomplishments:

(1) clearly contrast with a characteristic profile of Nikerray Middlebrook when he was originally sentenced and (2) that distinctively stands out with overwhelming evidence that Nikerray Middlebrook is a positive role model among the adult male inmate population of JTVCC.

Unfortunately, DOC does not opine as to whether Defendant represents a threat to the community and how he will get along if he were released.

7. As to the continuing interest in 11 *Del. C.* §4217, DOC reminds the court that Defendant is not eligible for relief under §4217 until he has completed

half of the Level 5 sentence. Thus, if Defendant's sentence is not reduced, he will not be eligible for §4217 consideration until March 2015. If, on the other hand, his sentence were reduced from thirty-seven years in prison by two years, eight months, he would be entitled to §4217 review now.

8. Taking it all into consideration, Defendant's performance in prison over the last sixteen years, as reflected in DOC's April 10, 2012 assessment, supports reducing Defendant's 37 year maximum sentence to 34 years, 4 months, a two year, eight month reduction. This is a relatively modest reduction, potentially leaving Defendant many years from release.

9. Presumably, once Defendant is eligible to apply for §4217 consideration, he will apply to DOC for further reduction under 11 *Del. C.* §4217. As to that, the court offers no opinion now. DOC will not only re-consider Defendant's performance while in prison, but also the likelihood that he will be a productive member of society were he released. Perhaps, the process will include a professional evaluation to address the Attorney General's intuitive concern about sociopathy. Moreover, the process will probably determine where Defendant will live and how he will support himself. If DOC recommends further reduction, the Attorney General and the court, in turn, will re-consider the sentence in light of what the §4217 process develops.

For the foregoing reasons, the Level 5 portion of lead sentence **SHALL** be reduced from 37 years to 34 years, 4 months. An ASOP sentence order will be filed today reflecting this decision.

IT IS SO ORDERED.

Date July 19, 2012

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Criminal)
Robert H. Surles, Deputy Attorney General
Perry Phelps, Warden, JTVCC
James C. Simms, Master Correctional Counselor
Ronald G. Hosterman, Treatment Administrator
Nikerray Middlebrook, Defendant