

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

STATE OF DELAWARE,)	
)	
v.)	Case No. 1110007790
)	
GREGORY H. LASHBROOK,)	
)	
Defendant.)	

Submitted: January 24, 2014
Decided: April 28, 2014

ORDER

***Upon Defendant's Motion for Reduction in Sentence –
DENIED, without prejudice.***

1. On March 1, 2012, Defendant pleaded guilty to Manslaughter, Driving Under the Influence of Alcohol, and Driving with a Suspended License. The State sought a sentence exceeding the sentencing guidelines' recommendation of 2 to 5 years, and the court requested recent sentences for similarly situated defendants. After considering counsels' submissions, Defendant was sentenced on June 1, 2012 to 25 years at Level V, suspended after 6 years for decreasing supervision levels.

2. Defendant timely filed a motion for sentence reduction on July 20, 2012. Defendant's motion primarily supplied more cases, and focused on *State v.*

Gordon Manis,¹ where the court sentenced a similarly situated defendant to 2 years. At that time, the State objected as no new or different facts had been offered. Further, the State prepared a chart of motor vehicle homicide cases' dispositions. The State also focused on the accident's aggravating factors, including a blood alcohol content of .288, Defendant's vehicle's condition, and the number of cars involved.

3. On March 26, 2013, the court denied Defendant's motion without prejudice to Defendant's filing a new motion after serving two full years in prison. The court found motor vehicle homicide cases' dispositions turn on their specific facts, and at that time, the sentence did not appear out of line. The court suggested, however, that if Defendant constructively used his time in prison, the court might revisit the sentence, but cautioned Defendant should not consider this "as a hopeful sign." The court specifically retained jurisdiction to Defendant's refiling.

4. On December 17, 2013, Defendant filed this Motion for Reduction in Sentence, supplemented by a letter written December 15, 2013. Defendant emphasizes his efforts to use his prison time constructively. Defendant lists his rehabilitative activities, including counseling and therapy programs, paralegal education, and outreach efforts, particularly to area high schools.

¹ *Manis v. State*, 782 A.2d 265 (Del. 2001).

5. At the court's insistence, the State responded on January 24, 2014. The State properly acknowledges, "This Court retained jurisdiction pursuant to its March 26, 2013 order ..., thus Defendant's present application is not procedurally barred." Nonetheless, the State continues,

The points raised in Defendant's present submission evidence the type of conduct warranting the awarding of 'good time,' not the extraordinary grant of a reduction of his sentence.

Rule 35, however, only requires "extraordinary" circumstances to "consider an application made more than 90 days after the imposition of sentence."² Rule 35 allows the court a "significant amount of discretion in resentencing."³

6. The State appears to conflate Rule 35's procedural and substantive standards. To be clear, the court holds where jurisdiction is retained, extraordinary circumstances are unnecessary.⁴ Therefore, the motion is timely. Further, the court is interested in Defendant's rehabilitative efforts, which need not be extraordinary.

7. The State also opposes Defendant's motion substantively. Arguing that Delaware's sentencing paradigm already provides for "good time" diminution of

² Super. Crim. Ct. Rule 35(b).

³ *Fullman v. State*, 431 A.2d 1260 (Del. 1981). *See also Shy v. State*, 246 A.2d 926 (Del. 1968).

⁴ *Francis v. State*, 918 A.2d 338 (Del. 2006).

sentences for Defendant's efforts,⁵ the State asserts that to further reduce his sentence for these same behaviors is inconsistent with the Truth in Sentencing Act. The State also argues Rule 35 provides "extraordinary relief" where, on further reflection, an original sentence seems unduly harsh. Lastly, the State argues Defendant's actions merely fulfill his promises to "do better" relied on by the court in its initial sentencing and validate the initial decision not to impose a more harsh sentence.

8. The State's referring to "good time" credits is a bit glib, considering that "good time" is typically awarded as a matter of course when Defendant starts serving a sentence. Otherwise, the court does not recall scaling back the sentence to six years, as the State implies. The sentence, at six years, exceeds the sentencing guidelines *maximum* recommendation. So, the court is willing, with the benefit of hindsight, to reconsider the sentence as harsh.

9. The court will consider reducing the sentence by the year it exceeds the guideline's maximum recommendation when Defendant is 18 months from release under the current sentence. The court believes that point will come in June 2015.

10. Meanwhile, if Defendant wants more relief, he may ask DOC to consider his sentence under 11 *Del.C.* § 4217.

⁵ 11 *Del. C.* § 4381.

For the foregoing reasons, Defendant's Motion for Reduction in Sentence is **DENIED, without prejudice**. The court continues to retain jurisdiction.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Criminal)
Sean P. Lugg, Deputy Attorney General
Louis B. Ferrara, Esquire