

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

<b>STATE OF DELAWARE,</b>	)	
	)	
	)	
v.	)	<b>ID. No. 1301004925</b>
	)	
	)	
<b>DANIEL R. REMEDIO,</b>	)	
	)	
Defendant.	)	

Submitted: January 5, 2015  
Decided: January 26, 2015

**ORDER ON DEFENDANT’S MOTION FOR REARGUMENT  
OR STAY OF PROCEEDINGS**

AND NOW this 26<sup>th</sup> day of January, 2015, having read and considered Defendant’s Motion for Reargument of the Court’s order denying sentence modification or for a Stay of the Proceedings in this matter pending resolution of an appeal currently before the Delaware Supreme Court,<sup>1</sup> **IT IS HEREBY ORDERED** that the Motion is **DENIED** for the following reasons:

(1) On February 14, 2014, this Court sentenced Daniel R. Remedio to an aggregate five-year term of incarceration for domestic assault with a weapon and related offenses. Remedio filed no direct appeal from his convictions or sentence.

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<sup>1</sup> See Notice of Appeal, *State of Delaware v. Daniel Diaz*, No. 360, 2014 (Del. July 1, 2014).

He did, however, on June 2, 2014 (or 108 days after he was sentenced), through new counsel, file a motion requesting reduction of his term of imprisonment.<sup>2</sup>

(2) The Court considered Remedio's Motion for Sentence Modification, the State's response thereto, the reports and court documents generated during the investigation and prosecution of Remedio's crimes, the forensic and other mental health records produced in this matter, the Court's presentence file, and the complete sentencing record and transcript. On December 31, 2014, the Court issued a 12-page opinion and order denying Remedio's motion.<sup>3</sup> Remedio filed a timely motion for reargument.<sup>4</sup>

(3) Superior Court Civil Rule 59(e) (made applicable to criminal cases pursuant to Superior Court Criminal Rule 57(d))<sup>5</sup> permits the Court to reconsider

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<sup>2</sup> Def.'s Mot. to Modify Sent. (D.I. 36).

<sup>3</sup> *State v. Remedio*, \_\_\_ A.3d \_\_\_, 2014 WL 7476400 (Del. Super. Ct. Dec. 31, 2014).

<sup>4</sup> *See Binaird v. State*, 2014 WL 7454239, at \*2 (Del. Dec. 29, 2014) ("A motion for reargument must be filed within five days of the filing of the Superior Court's decision."); *see also* *See* Super. Ct. Crim. R. 45(a) (the five days excludes Saturdays, Sundays and legal holidays).

<sup>5</sup> Super. Ct. Crim. R. 57(d) ("In all cases not provided for by rule or administrative order, the court shall regulate its practice in accordance with the applicable Superior Court civil rule or in any lawful manner not inconsistent with these rules or the rules of the Supreme Court."); Super. Ct. Civ. R. 59(e) (providing a vehicle for motions for reargument of the Court's decisions).

its findings of fact, conclusions of law, or judgments.<sup>6</sup> It is not a device for raising new arguments or rehashing those already presented.<sup>7</sup> And a motion for reargument will be denied unless the Court has “overlooked controlling precedent or legal principles,” or “misapprehended the law or facts such as would have changed the outcome of the underlying decision.”<sup>8</sup> The party seeking reargument has the burden to demonstrate newly discovered evidence, a change in the law, or manifest injustice.<sup>9</sup> Upon a Rule 59(e) reargument motion, the Court “will determine from the motion and answer whether reargument will be granted.”<sup>10</sup> The merit of a Rule 59(e) reargument motion is directed to the sound discretion of this Court.<sup>11</sup>

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<sup>6</sup> *Bd. of Managers of the Delaware Criminal Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170, at \*1 (Del. Super. Ct. Jan. 17, 2003), *aff’d in part*, 840 A.2d 1232 (Del. 2003) (internal citation omitted).

<sup>7</sup> *State v. Abel*, 2011 WL 5925284, at \*1 (Del. Super. Ct. Nov. 28, 2011) (“It is well settled that a motion for reargument is not an opportunity for a party to revisit arguments already decided by the Court or to present new arguments not previously raised.”); *Citimortgage, Inc. v. Bishop*, 2011 WL 1205149, at \*1 (Del. Super. Ct. Mar. 29, 2011).

<sup>8</sup> *Abel*, 2011 WL 5925284, at \*1; *Gannett Co.*, 2003 WL 1579170, at \*1; *Brenner v. Village Green, Inc.*, 2000 WL 972649, at \*1 (Del. Super. Ct. May 23, 2000) (only issue on motion for reargument is whether Court “overlooked something that would have changed the outcome of the underlying decision”).

<sup>9</sup> *Reid v. Hindt*, 2008 WL 2943373, at \*1 (Del. Super. Ct. July 31, 2008).

<sup>10</sup> Super. Ct. Civ. R. 59(e).

<sup>11</sup> *See Bengel v. State*, 101 A.3d 973, 978 (Del. 2014).

(4) In his sentence reduction motion, Remedio requested the Court to reweigh mitigating circumstances he believed were present and overlooked at the time of his sentencing and to reduce his term of imprisonment.<sup>12</sup> Remedio asked the Court to reconsider his claimed remorse for his actions and his “significant physical and mental health issues.”<sup>13</sup> Because Remedio had filed his motion after the 90-day time limit had passed, he was required to show that “extraordinary circumstances” existed.<sup>14</sup> The Court found that Remedio had failed to establish the existence of extraordinary circumstances that would allow consideration of his untimely motion.<sup>15</sup>

(5) Remedio now asks the Court to grant reargument in this matter, stay the proceedings pending the outcome of *Diaz v. State*, and, should the *Diaz* decision “affect[ ] the decision in this case,” reconsider his motion for sentence modification.<sup>16</sup>

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<sup>12</sup> Def.’s Mot. to Modify Sent., at 1-2, 5.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Sample v. State*, 2012 WL 193761, at \*1 (Del. Jan. 23, 2012) (“Under Rule 35(b), the Superior Court *only* has discretion to reduce a sentence upon motion made within 90 days of the imposition of sentence, *unless* ‘extraordinary circumstances’ are shown.”) (emphasis added).

<sup>15</sup> *State v. Remedio*, – A.3d –, –, 2014 WL 7476400, at \*2-3, 5 (Del. Super. Ct. Dec. 31, 2014).

<sup>16</sup> Def.’s Mot. to Reargue, at 2.

(6) The pendency of the *Diaz* appeal – which appeal coincidentally is being defended by Remedio’s present counsel – was never raised prior to the Court’s December 31, 2014 decision in this matter. The Court’s decision was issued almost two months after completion of the *Diaz* briefing and more than a month after Remedio’s counsel acknowledged the Supreme Court’s oral argument date in *Diaz*.<sup>17</sup> Remedio makes no attempt to explain his failure to earlier notify the Court of *Diaz*, a case he now suggests “is addressing similar issues,” and the decision in which could “affect[ ] the decision in this case.”<sup>18</sup> Further, he has made no attempt to explain why, by now hoping to echo his counsel’s arguments in *Diaz*, he is not either revisiting arguments already decided by the Court here or presenting new arguments not previously raised here.

(7) Regardless, the Court has fully reviewed the record in the *Diaz* appeal and finds that its pendency does not warrant reargument of and a stay in this matter. In *Diaz*, the Delaware Supreme Court is being asked to determine whether inmate Daniel Diaz’s sentence reduction motion was properly granted under the peculiar facts of his case – a VOP sentencing based, in part, on alleged crimes for

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<sup>17</sup> See State’s Reply Brief, *State of Delaware v. Daniel Diaz*, No. 360, 2014 (Del. Nov. 3, 2014); Appellee’s Acknowledgement of Oral Argument, *State of Delaware v. Daniel Diaz*, No. 360, 2014 (Del. Nov. 24, 2014).

<sup>18</sup> Def.’s Mot. to Reargue, at 2.

which he was later acquitted. The Court does not see that that decision will have any real impact here.

(8) Remedio has neither argued nor demonstrated that the Court has overlooked controlling precedent or legal principles, or misapprehended the law or facts such as would have changed the outcome of the Court's underlying decision on his modification motion.<sup>19</sup> Nor has he demonstrated that a stay of the proceedings is warranted. Consequently, his motion for reargument and a stay is **DENIED.**

**IT IS SO ORDERED.**

*/s/ Paul R. Wallace*  

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**PAUL R. WALLACE, JUDGE**

Original to Prothonotary  
cc: Michael W. Modica, Esquire  
Zoe Plerhoples, Deputy Attorney General  
Investigative Services Office

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<sup>19</sup> See *State v. Abel*, 2011 WL 5925284, at \*1 (Del. Super. Ct. Nov. 28, 2011).