

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

STATE OF DELAWARE)	
)	
)	I.D. No. 91009844DI
v.)	
)	
CHRISTOPHER R. DESMOND)	
)	
Defendant)	

Submitted: October 24, 2014
Decided: December 2, 2014

On Defendant's Motion to Have Concurrent Sentence of Imprisonment
Imposed.
DENIED.

ORDER

Steven P. Wood, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State

Christopher R. Desmond, Smyrna, Delaware, *pro se*

COOCH, R.J.

This 2nd day of December, 2014, upon consideration of Defendant's Motion to Have Concurrent Sentence of Imprisonment Imposed, it appears to the Court that:

1. Defendant Christopher R. Desmond was convicted in November 1992 of ten counts of Robbery in the First Degree, ten counts of Possession of a Deadly Weapon During the Commission of a Felony, two counts of Conspiracy in the Second Degree, three counts of Possession of a Deadly Weapon

by a Person Prohibited, three counts of Theft, and one count of Escape in the Third Degree in. In January 1993, Defendant was sentenced over 70 years at Level V.¹ Defendant's convictions were affirmed on direct appeal to the Supreme Court of Delaware.²

2. Over the years, Defendant has filed a voluminous list of motions both in this Court, as well as other Delaware state and federal courts.³
3. Defendant filed the instant "Motion for Correction of Consecutive Sentences," on September 15, 2014. In his filing, Defendant requests, pursuant to the amendments to 11 *Del. C.* 3901, that this Court amend his sentence and allow all of his sentences to run concurrently, rather than consecutively.⁴
4. As amended, Section 3901(d) provides in part: "The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant."⁵
5. Delaware case law is well settled on this point, and provides that "a law will not be construed as retroactive unless the Act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application."⁶
6. This Court finds that Section 3901(d), as amended does not have retroactive effect.⁷ As a result, Defendant's January 1993

¹ See Sentence Order, Docket #55 (Jan. 15, 1993). For additional facts not relevant to the instant motion, see *Desmond v. State*, 654 A.2d 821 (Del. 1994).

² See *Desmond v. State*, 654 A.2d 821 (Del. 1994).

³ See, e.g., *State v. Desmond*, 2011 WL 91984 (Jan. 5, 2011) (providing detailed account of procedural history).

⁴ Def.'s Memo. of L. at 2.

⁵ 11 *Del. C.* § 3901(d).

⁶ *State v. Ismaeel*, 840 A.2d 644 (Del. Super. 2004) (quoting *State v. Nixon*, 46 A.2d 874, 875 (Del. Gen. Sess. 1946)) (internal quotation marks omitted).

⁷ See *State v. Jennings*, 2014 WL 3943089, at *1 (Del. Super. Aug. 11, 2014) (finding "Section 3901(d), as amended, was not intended by the Delaware General Assembly to have a retroactive effect.").

sentences on the ten counts of Robbery in the First Degree, ten counts of Possession of a Deadly Weapon During the Commission of a Felony, two counts of Conspiracy in the Second Degree, three counts of Possession of a Deadly Weapon by a Person Prohibited, three counts of Theft, and one count of Escape in the Third Degree cannot be revisited under 3901(d).

Therefore, Defendant's Motion to Have Concurrent Sentence of Imprisonment Imposed is **DENIED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Investigative Services