

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

STATE OF DELAWARE

v.

DERRICK E. FULLER,

Defendant.

)
)
)
)
)
)

ID: 1106014318

ORDER

Upon Defendant's Motion for Reargument – DENIED.

1. On February 28, 2012, Defendant was sentenced for his latest felony conviction, Possession with intent to deliver cocaine. The conviction represented, at least, Defendant's third separate felony conviction. Viewing Defendant's record collectively, the conviction was his eighth felony.

2. Consistent with the plea agreement, the court sentenced Defendant to 364 days at Level 5 with no probation to follow. The State could have moved for sentencing under the habitual offender statute, 11 *Del. C.* § 4214(a).

3. On April 2, 2012, less than a month after the agreed upon sentence began, Defendant filed a motion for modification of sentence. Mostly, the motion relied on the ill-health of Defendant's wife. Defendant also claimed that he

is not a threat to society. The court responded immediately to Defendant's April 2, 2012 motion. By order filed April 3, 2012, the court pointed to the Superior Court Criminal Rule 11 plea agreement. The court also held in denying the motion:

If Defendant chooses to re-file motion, including corroboration as to his wife's treatment and Defendant's proposed living arrangements, court will allow State to respond. Meanwhile, Defendant's claim that he is not a threat to others greatly minimizes his dangerous criminal history.

4. Consistent with the April 3, 2012 order, Defendant filed a renewed motion for modification on April 16, 2012, with various supporting documents attached. So, as promised in the April 3, 2012 order, the court called for the State's response, which the State submitted on May 1, 2012.

5. In its response, the State offered several reasons why it opposed Defendant's motion. Specifically, in its response's paragraph 7, the State argued:

Ultimately, the Defendant wants to be released from jail and allowed to go to Florida unsupervised. The fact remains that he agreed to the 364-day sentence he is serving. The Defendant has not secured any employment and it appears although that he has the obligation of a child to support in Delaware. The only verifiable information provided by Defendant relates to his enrollment status at Springfield College. In support of this motion Defendant has offered

a denial of paternity and a promise to try to find a job upon his release. The State submits that releasing Defendant from his sentence after serving less three months would not serve the interest of justice.

6. On May 16, 2012, the court transmitted the State's response. The transmittal letter, again denied the motion without prejudice to Defendant's filing a reply addressing the State's points concerning Defendant's record, his wife's situation, his family situation, his future plans, and so on. The court demanded specifics about Defendant's finances and his work plans, among other things.

7. The order finally denying Defendant's motion was dated June 4, 2012 and docketed June 5, 2012. Defendant, now through counsel, filed this motion for reargument on June 11, 2012.

8. The motion is six paragraphs, five of them challenge the notion that Defendant fathered a child by a women other than his wife, and whom he does not support. Among other things, Defendant insists on an evidentiary hearing at which the child's mother will be obligated to prove Defendant is the child's father.

9. The motion's remaining paragraph provides, in toto:

Defendant submits that he has provided a substantial basis to support his motion for sentence modification. At a minimum, Defendant seeks reconsideration of a modification that would allow him to attend

the fall semester of Springfield College at its Tampa campus. Defendant[’s] continued education is the most effective vehicle for making a positive change in his life. As of September, Mr. Fuller will have completed approximately 5 months at L5. Any further incarceration would have marginal value especially when weighed against the benefits of attending Springfield College.

10. The motion for reconsideration is skewed. The allegations concerning the child did not appear until after Defendant’s, *pro se* motion had already provisionally denied. Denial was based, and it continues to be based, primarily on the fact that the sentence was agreed on by the parties and, in the court’s estimation, lenient. Moreover, Defendant’s claims about his education were touched-on in the last order. Otherwise, Defendant, in his motion for reargument, does not address the concerns and requests for specific information in the earlier orders.

11. In summary, Defendant, a repeat offender, has served less than three months of the twelve months anticipated by his plea agreement. Primarily out of humanitarian concern about Defendant’s wife, the court invited an elaborate process for reconsidering Defendant’s sentence. Now, it has largely boiled-down to a claim that Defendant’s serving more than five months of the anticipated year would only have marginal value.

12. Other than to bolster Defendant’s denial of the paternity situation,

the motion for reconsideration does not add anything new and it does not undermine the original denials of Defendant's motion for modification.

13. Finally, the court again observes that after the court has made an elaborate ruling, counsel has submitted information that should have been provided sooner.¹

For the foregoing reasons, the motion for reargument is **DENIED**.

IT IS SO ORDERED.

Date: July 3, 2012

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)
pc: Andrew J. Vella, Deputy Attorney General
Michael W. Modica, Esquire