



Defendant was declared a habitual offender pursuant to 11 *Del. C.* § 4241(a) and was sentenced to a minimum mandatory of two years Level V incarceration.<sup>3</sup>

2. On August 12, 2019, Defendant asked this Court to modify his sentence under Rule 35(b).<sup>4</sup> Defendant requests this Court to modify/reduce his sentence by awarding “time served” and providing “discharge from Level 3 probation.”<sup>5</sup> In support of his motion, Defendant states the following grounds for relief: (1) “time served” – Defendant argues that he was sentenced to one year at Level III and has completed that sentence; (2) “conditional release” – Defendant argues that his conditional release was affected by his 11 *Del. C.* § 4216(b)<sup>6</sup> sentence, and (3) “completion of probation” – Defendant argues that he “has been successful and productive since his release . . . .”<sup>7</sup>

3. Defendant has made numerous requests to reduce or modify his sentence.<sup>8</sup> Superior Court Criminal Rule 35(b) provides that “[t]he court *will not*

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<sup>3</sup> Motion to Declare Defendant a Habitual Offender Granted, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 29 (Del. Super. July 05, 2013).

<sup>4</sup> Defendant’s Motion for Modification, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 46 (Aug. 12, 2019) [hereinafter “Def.’s Mot.”].

<sup>5</sup> Def.’s Mot. at page 3.

<sup>6</sup> See 11 *Del. C.* 4216(b) (“Where an inmate is serving a “nonmandatory” Level V (incarceration) sentence and is subsequently sentenced to a mandatory term of incarceration, serving of the earlier sentence shall be suspended and the inmate shall serve the new mandatory Level V sentence until it is completed and then resume serving the earlier sentence.”).

<sup>7</sup> Def.’s Mot. at page 2.

<sup>8</sup> Defendant’s Motion for Modification of Sentence, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 35 (June 16, 2014); Defendant’s Motion for Modification (Review/Letter) of Sentence, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 39 (Sept. 16, 2015); Defendant’s Motion for Modification, *State of Delaware v. Juan E.*

consider repetitive requests for reduction of sentence.”<sup>9</sup> Unlike the ninety-day jurisdictional limit with its “extraordinary circumstances” exception, the bar to repetitive motions has no exception. This Court has denied Defendant’s requests in 2014 and 2016.<sup>10</sup> Defendant’s motion is barred because it is repetitive in nature.

4. Furthermore, as to Defendant’s claims surrounding probation, Defendant’s prior time spent on probation was violated, and the time at Level III currently being served does not relate to the probation previously violated. The current term of probation has not been fulfilled. Moreover, as to Defendant’s claim surrounding his mandatory minimum sentence, Superior Court Rule of Criminal Procedure 35(b) provides no authority for a reduction or suspension of the mandatory portion of a *substantive* statutory minimum sentence.<sup>11</sup> As such, the sentence was and remains appropriate for all the reasons stated at the time of sentencing.

**IT IS SO ORDERED** that Defendant’s Motion for Modification of Sentence is **DENIED**.

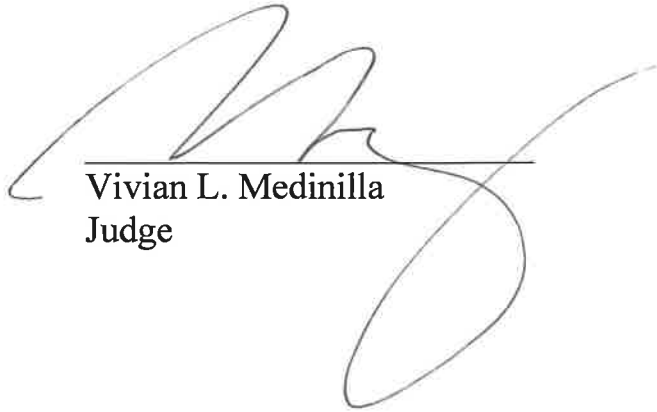
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*Colon*, Crim. ID No. 1207022774, D.I. 42 (Feb. 05, 2016); Defendant’s Motion for Modification, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 46 (Aug. 12, 2019).

<sup>9</sup> SUPER. CT. CRIM. R. 35(b) (emphasis added).

<sup>10</sup> Order Denying Defendant’s Motion for Modification of Sentence, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 38 (Oct. 10, 2014); Order Denying Defendant’s Motion for Modification of Sentence, *State of Delaware v. Juan E. Colon*, Crim. ID No. 1207022774, D.I. 43 (May 16, 2016).

<sup>11</sup> *State v. Sturgis*, 947 A.2d 1087, 1092 (Del. 2008).



Vivian L. Medinilla  
Judge

oc: Prothonotary  
cc: Defendant  
Department of Justice  
Investigative Services