

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

ANTONIO RUSSELL,

Defendant.

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I.D. No. 1707010054

Date Submitted: February 25, 2022

Date Decided: May 16, 2022

ORDER

Upon consideration of Defendant's Motion for Sentence Modification ("Motion");¹ Superior Court Criminal Rule 35; statutory and decisional law; and the record in this case, **IT APPEARS THAT:**

1. On August 21, 2018, Defendant pled guilty to three charges: (1) Manslaughter; (2) Possession of a Firearm During the Commission of the Felony ("PFDCF"); and (3) Possession of a Firearm by a Person Prohibited ("PFBPP").²

2. On January 25, 2019, the Court sentenced Defendant as follows: for Manslaughter (IN17-07-0918), 25 years at Level V, suspended after 12 years at Level V KEY, for 13 years at Level IV DOC Discretion, suspended after 6 months at Level IV DOC Discretion, for 18 months at Level III, hold at Level III until space

¹ D.I. 79.

² D.I. 35.

is available at Level IV DOC Discretion; for PFDCF (IN17-07-0920), 3 years at Level V; and for PFBPP, 8 years at Level V, suspended for 1 year at Level III.³

3. On February 25, 2022, Defendant filed the instant Motion.⁴ Defendant asks the Court to modify his sentence as follows:

25yrs Sus for 8yrs lvl 5 & successful completion of lvl 5 program Road To Recovery; 1 yr work release; 18 months lvl 3(Task); or alternatively, 25 yrs at lvl 5 sus for 10yrs lvl 5 and successful completion of any lvl 5 program that supercede [sic] KEY followed by 6 months lvl 4 DOC discretion [sic] held at lvl 3 to lvl 4 available.⁵

Defendant is primarily concerned with being resentenced to substance abuse treatment programming now that the KEY program is no longer available.

4. As stated in Defendant's Sentence Order, Defendant shall "[b]e evaluated for substance abuse and follow any recommendations for counseling, testing or treatment deemed appropriate."⁶ The DOC will conduct the evaluation and determine Defendant's treatment needs.

5. In addition, this is Defendant's second request to modify his sentence under Rule 35(b), and therefore, this Motion is barred as repetitive.⁷

³ D.I. 51. Probation is concurrent. *Id.*

⁴ D.I. 79.

⁵ *Id.* The sentence is effective July 25, 2017.

⁶ D.I. 51.

⁷ D.I. 52, 54; *State v. Bednash*, 2020 WL 2917305, *2 (Del. Super. June 3, 2020).

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's
Motion for Sentence Modification is **DENIED**.

IT IS SO ORDERED.

/s/ Jan R. Jurden
Jan R. Jurden, President Judge

Original to Prothonotary:
cc: Matthew B. Frawley, DAG
Antonio Russell (SBI #00836045)