

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 v.) ID# 0312004556
)
 ANTHONY L. BROWN,)
)
 Defendant.)

Date Submitted: April 18, 2022
Date Decided: May 25, 2022

ORDER DENYING DEFENDANT’S MOTION FOR MODIFICATION OF SENTENCE

AND NOW TO WIT, this 25th day of May, 2022, upon consideration of Defendant’s Letter Motion for Modification (“Motion”),¹ Superior Court Criminal Rule 35, statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

1. Effective December 5, 2003, Defendant was sentenced as follows: as to Robbery First Degree, IN03121013, 7 years at Level 5, suspended after serving 4 years at Level 5, for 1 year at Level 4 Halfway House, suspended after 6 months at Level 4 Halfway House, for 6 months at Level 3, hold at Level 5 until space is available at Level 4. The first 3 years of this sentence is a mandatory term. And as to Possession of a Deadly Weapon by a Person Prohibited (“PDWBPP”),

¹ D.I. 49.

IN03121015, 5 years at Level 5, suspended for 2 years at Level 3.²

2. On November 12, 2009, Defendant was found in violation of probation (“VOP”) and sentenced as follows the same day: as to Robbery First Degree, IN03121013-01, 4 years at Level 5. And as to PDWBPP, IN03121015-01, 2 years at Level 5, suspended for 12 months at Level 4 Work Release, hold at Level 5 until space available at Level 4 Work Release. This sentence is consecutive to any sentence now serving.³

3. Defendant filed the instant Motion on April 18, 2022, and asks the Court to suspend or modify 12 to 18 months of his VOP sentence so that he may secure an early release.⁴ Defendant argues the modification is warranted based on the following: (1) his completion of 20 programs (unspecified); (2) his acquisition of over 30 certificates (unspecified); (3) his lack of troubling behavior for over 9 years while incarcerated; (4) his fear for his life;⁵ and (5) his desire to experience fatherhood in relation to his daughter who was born while he has been incarcerated.⁶

4. Superior Court Criminal Rule 35 governs motions for modification of sentence. Under Rule 35(b), “a motion for sentence modification must be filed within [90] days of sentencing, absent a showing of ‘extraordinary circumstances.’”⁷

² D.I. 36.

³ *Id.*

⁴ D.I. 49.

⁵ The Defendant does not elaborate on why he fears for his life.

⁶ D.I. 49.

⁷ *Croll v. State*, 2020 WL 1909193, at *1 (Del. Apr. 17, 2020) (TABLE) (affirming the Superior

The Court will consider an application made more than 90 days after the imposition of sentence only in “extraordinary circumstances,” or pursuant to 11 *Del. C.* §4217. Delaware law places a heavy burden on the moving party to establish “extraordinary circumstances” in order to “uphold the finality of judgments.”⁸ “Extraordinary circumstances” excusing an untimely Rule 35(b) motion are circumstances that “specifically justify the delay, are entirely beyond a petitioner’s control, and have prevented the applicant from seeking the remedy on a timely basis.”⁹ Mitigating factors that could have been presented at sentence, exemplary conduct, or successful rehabilitation while incarcerated do not constitute “extraordinary circumstances.”¹⁰ A motion for “modification of partial confinement or probation is not subject to the [90]-day limitation applicable to a motion for reduction” of a sentence of imprisonment.¹¹

5. It is unclear from Defendant’s Motion what portion of his VOP sentence he is asking the Court to modify. To the extent he is seeking modification of Level 5 time — a sentence of imprisonment — the 90-day bar applies because he

Court’s denial of a motion for modification of sentence where the motion was repetitive and filed beyond the 90-day limit).

⁸ *State v. Diaz*, 2015 WL 1741768, at *2 (Del. Apr. 15, 2015).

⁹ *State v. Culp*, 152 A.3d 141, 145 (Del. 2016) (internal quotations omitted) (quoting *Diaz*, 2015 WL 1741768, at *2).

¹⁰ *See id.* at 145–46 (recognizing that participation in educational and rehabilitative prison programs is commendable, but does not by itself constitute “extraordinary circumstances” for purposes of Rule 35(b)).

¹¹ *State v. Redden*, 111 A.3d 602, 609 (Del. 2015) (citing *Benge v. State*, 101 A.3d 973, 976 (Del. 2014)).

was sentenced on the VOP in 2009. Accordingly, the Court may only modify that portion of Defendant's sentence if he demonstrated "extraordinary circumstances." Defendant has not met this burden. His good behavior, completion of programs while in custody, stated fear for his life (without elaboration), and desire to experience fatherhood with his daughter do not constitute "extraordinary circumstances."

6. The Court will not consider repetitive requests for reduction of sentence.¹² Unlike the 90-day jurisdictional limit with its "extraordinary circumstances" exception, the bar to repetitive motions has no exception. Instead, the bar is absolute and flatly "prohibits repetitive requests for reduction of sentence."¹³ This is Defendant's sixth request for reduction or modification of sentence since his original sentence was imposed and his third following his VOP sentence.¹⁴

7. This Motion was not filed under 11 *Del. C.* §4217, and no additional information has been provided to the Court that would warrant a reduction or modification at this time. Thus, the Court finds that the sentence is appropriate for

¹² Super. Ct. Crim. R. 35(b).

¹³ *Thomas v. State*, 2002 WL 31681804, at *1 (Del. Nov. 25, 2002). *See also Jenkins v. State*, 2008 WL 2721536, at *1 (Del. July 14, 2008) (Rule 35(b) "prohibits the filing of repetitive sentence reduction motions."); *Morrison v. State*, 2004 WL 716773, at *2 (Del. Mar. 24, 2004) ("motion was repetitive, which also precluded its consideration by the Superior Court").

¹⁴ D.I. 22; D.I. 24; D.I. 30; D.I. 44; D.I. 47.

all the reasons stated at the time of sentencing.¹⁵

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

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

cc: Original to Prothonotary
Gregory E. Smith, DAG
Anthony L. Brown (SBI# 00286636)

¹⁵ See D.I. 14. The sentences at issue take into account the following aggravating factors: (1) Defendant's criminal history which includes Felony Theft, Burglary Second Degree, Theft of a Senior, Drug Possession, and Conspiracy Second Degree; and (2) Defendant's multiple violations of probation.