

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,                    )  
                                                  )  
                  v.                            ) ID No. 0408022175  
                                                  )  
PAUL EDWARD WEBER,                 )  
                                                  )  
                  Defendant.             )  
                                                  )  
                                                  )

Submitted: April 11, 2022  
Decided: June 8, 2022

**Defendant’s Motion for Evidentiary Hearing – DENIED**

**Defendant’s Motion for Reduction of Sentence – DENIED**

**MEMORANDUM OPINION**

Andrew J. Vella, Esquire, Department of Justice, 820 North French Street, 7<sup>th</sup> Floor, Wilmington, DE 19801. Attorney for State of Delaware.

Paul E. Weber, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977. *Pro Se* Defendant.

**CARPENTER, J.**

Before the Court is Defendant Paul Weber’s (“Weber”) Motion for Evidentiary Hearing and Motion for Reduction of Sentence. Additionally, Weber filed two letters with the Court in support of his Motion for Reduction of Sentence. For the reasons set forth in this Opinion, Weber’s Motion for Evidentiary Hearing is **DENIED**, and Weber’s Motion for Reduction of Sentence is **DENIED**.

## **I. Factual & Procedural Background**

On September 20, 2004, a grand jury indicted Weber on charges of Attempted Robbery First Degree and Attempted Carjacking First Degree.<sup>1</sup> In March of 2005, after a jury trial, Weber was convicted of both charges.<sup>2</sup> Consequently, this Court sentenced Weber to 25 years at Level V for Attempted Robbery First Degree and three years at Level V for Attempted Carjacking First Degree.<sup>3</sup>

Weber appealed his convictions and sentences.<sup>4</sup> The Delaware Supreme Court affirmed Weber’s conviction for Attempted Carjacking First Degree, but reversed Weber’s conviction for Attempted Robbery First Degree.<sup>5</sup> The Delaware Supreme Court reasoned that this Court erroneously denied Weber an instruction on the lesser

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<sup>1</sup> *State v. Weber*, 2014 WL 4167492, at \*1 (Del. Super. Ct July, 29, 2014), *aff’d*, 113 A.3d 1081 (Del. 2015). A more detailed factual history can be found in the Delaware Supreme Court’s opinion. *Weber v. State*, 38 A.3d 271 (Del. 2012).

<sup>2</sup> *Weber*, 2014 WL 4167492, at \*1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Weber v. State*, 971 A.2d 135, 139-40 (Del. 2009).

included offense of Offensive Touching.<sup>6</sup> Thus, Weber’s case was remanded for a new trial on the Attempted Robbery First Degree charge.<sup>7</sup> In April of 2010, the jury once again found Weber guilty of Attempted Robbery First Degree.<sup>8</sup> By the time Weber was retried and convicted for Attempted Robbery First Degree, Weber had completed his three-year sentence for Attempted Carjacking First Degree and was discharged from prison.<sup>9</sup> After his Attempted Robbery First Degree conviction, Weber was sentenced as a habitual offender to 25 years at Level V and was reincarcerated.<sup>10</sup> Weber appealed his 25 year sentence, which the Delaware Supreme Court affirmed in 2012.<sup>11</sup>

Thereafter, in 2014, Weber filed seven motions with this Court, three of which were Rule 35 motions.<sup>12</sup> This Court denied Weber’s previous Rule 35 motion because his first claim did not fall within the rule’s narrow purview and his second claim of double jeopardy was without merit.<sup>13</sup> The Court also denied Weber’s previous Rule 35 motion because the claim had already been resolved by the

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<sup>6</sup> *Id.* at 142-43.

<sup>7</sup> *Id.* at 139-40.

<sup>8</sup> *Weber*, 2014 WL 4167492, at \*1.

<sup>9</sup> Def.’s Mem. in Support of Double Jeopardy/Merger/Finality of Sentence Claim, D.I. 376, at 2 (Dec. 3, 2020) [hereinafter “Def.’s Mem. in Support of Sentence Claim”].

<sup>10</sup> *Weber*, 2014 WL 4167492, at \*1. In 2001, Weber was convicted of Second Degree Forgery which served as the basis for his habitual offender status. *Weber v. State*, 197 A.3d 492 (Del. 2018) (Table).

<sup>11</sup> *Weber*, 2014 WL 4167492, at \*1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*3-4

Delaware Supreme Court and granting Weber’s motion would have been against Delaware case law.<sup>14</sup>

On June 8, 2020, Weber filed a Rule 35 Motion for Reduction of Sentence.<sup>15</sup> On August 27, 2020, this Court held oral argument for Weber’s Motion. During that hearing, the Court permitted Weber to submit a supplemental memorandum concerning the merger and double jeopardy issues presented. Thereafter, on February 1, 2021, Weber filed a Motion for Evidentiary Hearing.<sup>16</sup>

## **II. Discussion**

### **A. Motion for Evidentiary Hearing**

Weber asks this Court to grant his Motion for Evidentiary Hearing, because (1) Weber believes the State’s response does not address Weber’s substantive claims and (2) Weber wants to present testimony to support his Motion for Reduction of Sentence.<sup>17</sup> Rule 35 does not require a hearing and whether to hold an evidentiary hearing is within the Court’s discretion.<sup>18</sup> After hearing oral argument for Weber’s

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<sup>14</sup> *Id.* at \*3.

<sup>15</sup> Def.’s Mot. for Reduction of Sentence, D.I. 366, at 1 (June 15, 2020).

<sup>16</sup> Def.’s Mot. for Evidentiary Hr’g, D.I. 382, at 1 (February 8, 2021).

<sup>17</sup> *Id.* ¶¶ 2, 7 at 1, 3.

<sup>18</sup> Del. Super. Ct. Crim. R. 35(b); *Shy v. State*, 246 A.2d 926, 927 (Del. 1968) (holding that “a motion under Criminal Rule 35(b) is addressed to the discretion of the court, and if the moving papers fail to make some showing for relief, the motion, in the discretion of the court, may be denied without hearing.”); *Semick v. State*, 451 A.2d 1155, 1155 (Del. 1982) (holding that when a court complies with Rule 35(a)’s procedural requirements, a trial judge will not be found to have abused his discretion in denying an evidentiary hearing.).

Motion, permitting supplemental memorandums, and closely reading all papers filed with the Court, the Court believes an additional hearing is unnecessary. Because the Court is well prepared to decide Weber's Rule 35 Motion, the Court denies Weber's Motion for Evidentiary Hearing.

#### B. Rule 35 Motions

When presented with a Rule 35 motion, “the Court must first identify the specific procedural mechanism the inmate attempts to invoke; it must then determine whether that mechanism is available under the circumstances.”<sup>19</sup> It is unclear to the Court whether Weber's Motion is filed under Rule 35(a) or 35(b). Although Weber's Motion states it is filed pursuant to Rule 35(b) and is accordingly captioned as a Motion for Reduction of Sentence, Weber maintains in his Reply to State's Response that his Motion is filed pursuant to Rule 35(a).<sup>20</sup> Because Delaware Courts provide *pro se* defendants with a “greater measure of lenience,” the Court will review Weber's Motion under both rules.<sup>21</sup>

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<sup>19</sup> *State v. Remedio*, 108 A.3d 326, 329 (Del. Super. Ct. 2014).

<sup>20</sup> Def.'s Mot. for Reduction of Sentence, at 1; Def.'s Reply to State's Resp. to Mem. in Support of Double Jeopardy/Merger/Finality of Sentence Claim, D.I. 383, ¶ 12, at 10 (February 8, 2021) [hereinafter, “Def.'s Reply to State's Resp.”].

<sup>21</sup> *State v. Dorman*, 1993 WL 1610478, at \*1 (Del. Super. Ct. Jan. 11, 1993), *aff'd*, 625 A.2d 278 (Del. 1993); *Wright v. Wilmington Tr. Co.*, 1993 WL 1626508, at \*2 n.1 (Del. Super. Ct. May 20, 1993); *Great Seneca Fin. Corp. v. Lifeng Lee Hsu*, 2006 WL 8427201, at \*1 (Del. Com. Pl. June 28, 2006) (stating that “[a]lthough the caption of defendant's Motion is flawed, this Court adheres to a policy of judicial lenience toward *pro se* defendants and will therefore examine defendant's Motion on other grounds under the Court of Common Pleas Civil Rules.”).

## 1. Rule 35(a)—Correction of Sentence

Under Rule 35(a), “[t]he court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided therein for the reduction of sentence.”<sup>22</sup> The Delaware Supreme Court has explained that Rule 35(a) serves a narrow purpose, which is solely to correct an illegal sentence.<sup>23</sup> A sentence is illegal, and thus falls within Rule 35(a)’s bounds, only “if it exceeds the statutory limits, violates double jeopardy, is ambiguous or internally contradictory, or is not authorized by the judgment of conviction.”<sup>24</sup>

Weber argues that his “resentencing for robbery after he completed his carjacking sentence is violative of double jeopardy,” and thus the Court finds that Weber’s claim falls squarely within Rule 35(a)’s limited scope.<sup>25</sup> Specifically, Weber maintains that his Attempted Robbery First Degree conviction merged with his Attempted Carjacking First Degree conviction for sentencing purposes.<sup>26</sup> Weber emphasizes that his carjacking and robbery sentences “were not aimed at punishing different behaviors.”<sup>27</sup> Moreover, Weber claims that considering the Delaware General Assembly’s recent repeal of the carjacking statute, “it was never the

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<sup>22</sup> Del. Super. Ct. Crim. R. 35(a).

<sup>23</sup> *DeShields v. State*, 27 A.3d 551 (Del. 2011) (Table).

<sup>24</sup> *Henry v. State*, 144 A.3d 551 (Del. 2016) (Table).

<sup>25</sup> Def.’s Mem. in Support of Sentence Claim at 1.

<sup>26</sup> *See id.* at 2-3.

<sup>27</sup> *See id.* at 4.

legislative intent to impose dual punishment for the two offenses.”<sup>28</sup> Weber asserts that his case was “the primary impetus” for this legislative change and concludes that this statutory revocation is implicitly retroactive.<sup>29</sup>

To the contrary, the State argues that carjacking and robbery do not merge for sentencing purposes.<sup>30</sup> The State argues that it was the General Assembly’s intent to impose cumulative punishments for both carjacking and robbery.<sup>31</sup> The State asserts that not only did this Court address Weber’s double jeopardy claim in its previous opinion,<sup>32</sup> but the Court properly relied on *Lewis v. State*,<sup>33</sup> which clarified that a defendant may be sentenced for carjacking and theft without violating double jeopardy.<sup>34</sup>

In response, Weber asserts that *Lewis* does not factually or legally represent what the State proposes.<sup>35</sup> Weber believes that *Lewis* bolsters his merger theory; Weber argues that (1) in *Lewis* the defendant’s “theft conviction was for a separate offense from that of the carjacking,” which is unlike Weber’s case because Weber was prosecuted and convicted of two offenses stemming from a singular act and (2)

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<sup>28</sup> Def.’s Mot. for Reduction of Sentence, ¶ 3, at 2-3.

<sup>29</sup> *Id.*

<sup>30</sup> State’s Resp. to Def.’s Mem. in Support of Double Jeopardy/Merger/Finality of Sentence Claim, D.I. 380, ¶ 4, at 3-4, [hereinafter, “State’s Resp.”].

<sup>31</sup> *See id.* ¶ 4, at 4-5.

<sup>32</sup> *State v. Weber*, 2010 WL 5343153, at \*2 (Del. Super. Ct. Dec. 15, 2020).

<sup>33</sup> 884 A.2d 512 (Del. 2005) (Table).

<sup>34</sup> State’s Resp., ¶ 4, at 4.

<sup>35</sup> *See* Def.’s Reply to State’s Resp., ¶¶ 1, 3 at 1-3.

*Lewis* only answered whether a defendant could be prosecuted—not punished—for carjacking and robbery.<sup>36</sup>

The Double Jeopardy Clauses found in both the United States and Delaware Constitution assure three protections: (1) a person cannot be prosecuted for the same offense after an acquittal, (2) a person cannot be prosecuted for the same offense after a conviction, and (3) a person cannot receive multiple punishments for the same offense.<sup>37</sup> The third protection, which is of consequence in this matter, is “termed *multiplicity* and flows from the principle that “[l]egislatures, not courts, prescribe the scope of punishments.”<sup>38</sup> When applying the multiplicity doctrine, the Court is required to presume that “the legislature does not intend to punish the same offense under two different statutes.”<sup>39</sup> However, this presumption is not absolute.

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<sup>36</sup> See *id.* Def.’s Mem. in Support of Sentence Claim at 5. The Court will not directly address Weber’s *Lewis v. State* argument as it will base its decision on other Delaware case law. Nevertheless, the Court notes that Weber has misread the facts in *Lewis*. Weber believes that the defendant in *Lewis*, who was sentenced for carjacking and theft, acquired the theft charge because he attempted to reach into the victim’s left pocket for the victim’s wallet. Thus, Weber believes the defendant in *Lewis* was being punished for two separate offenses—for stealing the victim’s car and for stealing the victim’s wallet. However, the relevant facts in *Lewis* read as follows: “As they were driving, Lewis told Geer [the victim] that he needed money and wanted the money in Geer’s wallet. As they drove over the hill, Lewis told Geer to pull over and grabbed the steering wheel. Geer drove under the I-95 overpass towards the gas station at the Adams Four Shopping Center and stopped. Lewis started to fumble through his left pocket. Thinking Lewis might be armed, Geer got out and tried to flag down passing cars.” 884 A.2d at \*2. Considering the *Lewis* facts and opinion in its entirety, the logical interpretation is that Lewis reached into his own pocket, which then prompted the victim to believe that Lewis was armed and to get out of the car.

<sup>37</sup> *State v. Cook*, 600 A.2d 352, 354 (Del. 1991) (citing *Grady v. Corbin*, 110 S. Ct. 2084, 2090 (1990)); *White v. State*, 243 A.3d 381, 396 (Del. 2020).

<sup>38</sup> *White*, 243 A.3d at 396 (emphasis in original) (quoting *Missouri v. Hunter*, 459 U.S. 359, 368 (1983)).

<sup>39</sup> *Id.* at 397.



If it is clearly the legislature’s intent to allow duplicative punishments for the same offense, the Double Jeopardy Clause is not violated.<sup>40</sup>

Considering the Delaware Supreme Court’s recent ruling in *Hubbard v. State*,<sup>41</sup> the Court finds it unnecessary to delve into the General Assembly’s intent to determine whether Weber’s sentence is constitutional. In *Hubbard*, the Delaware Supreme Court unambiguously ruled that “convictions for both carjacking and robbery arising out of the same conduct do not violate principles of double jeopardy.”<sup>42</sup> Although Weber argues that there is a significant difference between prosecutions and punishments under the double jeopardy analysis, there is no doubting that the Delaware Supreme Court’s *Hubbard* ruling equally applies to Weber’s sentences.

In fact, in making its decision in *Hubbard*, the Delaware Supreme Court cites the opinion it rendered in Weber’s case and definitively states that the Delaware Supreme Court “reject[ed] [Weber’s] claim that ‘convictions and sentencing for both Attempted Carjacking and Attempted Robbery First Degree constituted prohibited cumulative punishment in violation of double jeopardy.’”<sup>43</sup> Not only has the Delaware Supreme Court previously determined that Weber’s double jeopardy

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<sup>40</sup> *Id.*; *Cook*, 600 A.2d at 355.

<sup>41</sup> 238 A.3d 878 (Del. 2020) (Table).

<sup>42</sup> *Id.* at 878.

<sup>43</sup> *Id.* at \*1, n.3; *Weber v. State*, 38 A.3d 271, 278 (Del. 2012).

argument must be denied under settled Delaware law,<sup>44</sup> its ruling in *Hubbard* affirms that Weber’s sentences for attempted carjacking and attempted robbery are constitutional.

The Court must also conclude that the repeal of the carjacking statute is not implicitly retroactive. Under Delaware law, “[i]t is a general rule that statutory amendments operate prospectively unless the legislature *expressly* states, to the contrary, that the amendments shall be retrospective.”<sup>45</sup> Thus, “the Court will not infer an intention to make an act retrospective.”<sup>46</sup> House Bill 78, which repealed the carjacking statute, and its synopsis are silent on whether the repeal is retroactive.<sup>47</sup>

The Delaware Supreme Court has interpreted silence to signify that a change in statute is not retroactive.<sup>48</sup> The Delaware Supreme Court in *Fountain v. State* held that “the General Assembly would have spoken specifically if it intended

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<sup>44</sup> *Weber*, 38 A.3d at 278.

<sup>45</sup> *Fountain v. State*, 139 A.3d 837, 841 (Del. 2016) (emphasis added).

<sup>46</sup> *Keller v. Wilson & Co.*, 190 A. 115, 125 (Del. 1936).

<sup>47</sup> H.B. 78’s synopsis reads as follows: “This Act aims to make the robbery section of Delaware’s Criminal Code simpler and fairer. The Act deletes the carjacking sections and embeds them within the existing robbery statutes to remove duplication from the code. Under this Act, robbery in the first degree includes the theft of a vehicle where there is physical injury or the use, a display or threat of a deadly weapon or death which is a Class B felony; this carries a 3 year minimum mandatory sentence and a maximum sentence of 25 years in prison. Robbery in the Second Degree, a Class E felony, is elevated to a Class D felony if the theft involves a vehicle and elements that pose additional risk to public safety. The Act removes minimum mandatory sentences for some conduct and eliminates sentence enhancements based on prior convictions and the age of victim. The ability to impose lengthier sentences for subsequent conduct or for crimes against vulnerable victims rests with the discretion of sentencing judges.” Act to Amend Title 11 of the Del. Code Relating to Crimes and Criminal Procedure, House Bill No. 78 (May 30, 2019), available at <https://legis.delaware.gov/BillDetail?LegislationId=47548>.

<sup>48</sup> See *Fountain v. State*, 139 A.3d 837, 842-43 (Del. 2016).

the...[statutory amendment] to operate retroactively because for it to do so sensibly, other changes to give retroactivity meaning were needed.”<sup>49</sup> The Delaware Supreme Court explained that when granting retroactivity, especially to criminal defendants, the legislature is expected to provide a vehicle for relief so that offenders can overcome sentencing time bars.<sup>50</sup> Even though Weber’s case may have sparked the carjacking statute’s repeal and although the Legislature has now decided to “make the robbery section of Delaware’s Criminal Code simpler and fairer,”<sup>51</sup> the Delaware General Assembly did not explicitly state that the repeal was retroactive and thus has not provided criminal defendants a vehicle for relief. As a result, the Court must assume that the carjacking statute’s repeal is only prospective. Accordingly, the Court denies Weber’s Rule 35(a) Motion.

## 2. Rule 35(b)—Reduction of Sentence

Under Rule 35(b), “[t]he court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed.”<sup>52</sup> If a Rule 35(b) motion is filed outside of the 90-day window, a court may only consider the motion “in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217.”<sup>53</sup> Extraordinary circumstances only exist “when an offender faces some genuinely compelling

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<sup>49</sup> *Id.* at 842.

<sup>50</sup> *See id.* at 842-43.

<sup>51</sup> Synopsis, House Bill No. 78 (May 30, 2019), *available at* <https://legis.delaware.gov/BillDetail?LegislationId=47548>.

<sup>52</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>53</sup> *Id.*

change in circumstances that makes a resentencing urgent.”<sup>54</sup> The Delaware Supreme Court has held that extraordinary circumstances are those which “‘specifically justify the delay;’ are ‘entirely beyond a petitioner's control;’ and ‘have prevented the applicant from seeking the remedy on a timely basis.’”<sup>55</sup>

Notwithstanding the 90-day requirement and exception, this Court is prohibited from “consider[ing] repetitive requests for reduction of sentence.”<sup>56</sup> A Rule 35(b) motion is deemed repetitive when “it is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”<sup>57</sup> Additionally, unlike the 90-day exception, “Rule 35(b) does not set forth any exception to the repetitive motion bar.”<sup>58</sup>

Weber was convicted and sentenced for Attempted Robbery First Degree 11 years ago; it is obvious that Weber’s Motion has been filed outside of Rule 35(b)’s 90-day mandate. Therefore, Weber carries the heavy burden of overcoming the 90-day time limitation by proving there are extraordinary circumstances that warrant

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<sup>54</sup> *State v. Thomas*, 220 A.3d 257, 262 (Del. Super. Ct. 2019) (citing *Fountain v. State*, 139 A.3d 837, 842 n.20 (Del. 2016)).

<sup>55</sup> *State v. Diaz*, 113 A.3d 1081 (Del. 2015) (Table) (quoting *State v. Lewis*, 797 A.2d 1203, 1205 (Del. 2002) (Steele, J., dissenting)).

<sup>56</sup> Del. Super. Ct. Crim. R. 35(b); *State v. Redden*, 111 A.3d 602, 608–09 (Del. Super. Ct. Feb. 16, 2015), *as corrected* (Apr. 17, 2015) (“Also found in Rule 35(b) is a separate and more unforgiving bar: ‘[t]he [C]ourt *will not* consider repetitive requests for reduction of sentence.’ Unlike the 90–day jurisdictional limit with its ‘extraordinary circumstances’ exception, the bar to repetitive motions has no exception. Instead, this bar is absolute and flatly ‘prohibits repetitive requests for reduction of sentence.’”).

<sup>57</sup> *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

<sup>58</sup> *Id.* at 145.

relief.<sup>59</sup> Although Weber does not consistently use the term “extraordinary circumstances” in arguing for his sentence reduction, the Court believes it is fair to assume Weber’s arguments are presented as extraordinary circumstances in support of his Motion. The Court has narrowed Weber’s Rule 35(b) Motion to four alleged extraordinary circumstances. First, Weber believes he was subjected to a trial penalty<sup>60</sup> because his sentence was nine times higher than the State’s plea offer.<sup>61</sup> Weber asserts that the discrepancy between his sentence and the State’s plea offer “constitutes an additional extraordinary circumstance justifying a reduction of sentence.”<sup>62</sup> Weber clarifies that he is not presenting his trial penalty argument as a constitutional claim.<sup>63</sup>

Weber also mentions that the carjacking statute has been repealed, which leads the Court to assume that Weber believes the statutory repeal is an extraordinary circumstance that warrants relief.<sup>64</sup> Weber explains that he is remorseful, has served 80 percent of his sentence, suffers from various health conditions that put him at high risk for COVID-19, has completed several treatment programs, and has written

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<sup>59</sup> *Diaz*, 113 A.3d at 1081.

<sup>60</sup> The term “trial penalty,” also known as a “trial tax,” has been coined to describe the substantial difference in sentences for those who exercise their right to a trial as compared to those who plead guilty. Brian D. Johnson, *Trials and Tribulations: The Trial Tax and the Process of Punishment*, 48 *Crime & Just.* 313, 313–14 (2019).

<sup>61</sup> Def.’s Mot. for Reduction of Sentence, at ¶ 2, at 2.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *See id.* ¶ 3, at 2-3.

an e-book.<sup>65</sup> Moreover, Weber states that he has housing and employment available upon release.<sup>66</sup> As such, Weber asserts he does not pose a threat to the community.<sup>67</sup> In essence, Weber points the Court to his rehabilitation and health issues in support of granting his Rule 35(b) Motion.

The State argues that Weber's Rule 35(b) Motion is repetitive and therefore Weber's Motion is procedurally barred.<sup>68</sup> In the alternative, the State argues that Weber's Motion is not only "well beyond the 90-day limit," but Weber has also failed to demonstrate extraordinary circumstances.<sup>69</sup>

After searching the docket and Weber's files, the Court finds that Weber's Rule 35(b) Motion is not repetitive. Even though the State points the Court to Weber's several other motions for modification of sentence,<sup>70</sup> Weber's previous motions have been filed under Delaware Superior Court's Criminal Rules of Procedure 32, 35(a), and 61.<sup>71</sup> More importantly, Weber's previous motions made constitutional claims, which do not fall under Rule 35(b)'s scope. Regardless of the Court's finding that Weber's Motion is not repetitive, as set forth below, the Court

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<sup>65</sup> *Id.* ¶¶ 4-6, 10, at 3, 5.

<sup>66</sup> *Id.* ¶¶ 7-8, at 4.

<sup>67</sup> *Id.* ¶ 9, at 4.

<sup>68</sup> State's Resp., ¶ 2, at 1-3.

<sup>69</sup> *Id.* ¶ 3, at 3.

<sup>70</sup> State's Resp., at 2 n.3.

<sup>71</sup> *E.g.* Def.'s Mot. for Sentencing Hr'g and Correction of Sentence, D.I. 176, at 1 (May 6, 2013) (filed pursuant to Del. Super. Ct. Crim. R. 32 and 35(a)); Def.'s Mot. for Modification of Sentence, D.I. 251, at 1 (Feb. 10, 2016) (filed pursuant to Del. Super. Ct. Crim. R. 61).

will deny Weber’s Rule 35(b) Motion as time barred since it finds that Mr. Weber has not established extraordinary circumstances as the Rule requires.

Weber’s trial penalty argument does not meet Rule 35(b)’s definition of “extraordinary circumstance.” Weber has not offered any circumstances that specifically justified delaying his trial penalty argument, that were entirely beyond his control, and that prevented him from seeking a remedy within the 90-day requirement. Because Weber could have made this argument within the 90-day timeframe, the Court finds that Weber’s trial penalty argument is not an extraordinary circumstance and is therefore time barred under Rule 35(b). Frankly, the decision whether to accept a plea offer or go to trial was one totally within Weber’s control, and once that decision is made, a defendant cannot look to the Court to correct what they believe was a wrong decision in hindsight.

Additionally, under Delaware law, a legislative change is not an extraordinary circumstance.<sup>72</sup> The Delaware Superior Court has held that Rule 35(b) “is not now, nor ever has been, an instrument for reexamination of previously imposed sentences in light of subsequent statutory changes.”<sup>73</sup> Consequently, the carjacking repeal is not an extraordinary circumstance under Rule 35(b) and thus Weber’s claim is time barred.

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<sup>72</sup> See *State v. Thomas*, 220 A.3d 257, 261-62 (Del. Super. Ct. 2019).

<sup>73</sup> *Id.* at 261.

The Delaware Supreme Court has also held that “Rule 35(b) is not the proper vehicle for seeking modification based on rehabilitation.”<sup>74</sup> Rather, 90 days after a sentence has been imposed, an inmate may only seek a sentence modification based on his extraordinary rehabilitation through the DOC and Board of Parole under Title 11 Section 4217 or through Delaware’s clemency process.<sup>75</sup> Additionally, health concerns are not extraordinary circumstances under Rule 35(b).<sup>76</sup> An inmate’s health concerns must be addressed by the DOC under Title 11 Section 4217.<sup>77</sup> Accordingly, the Court cannot grant Weber Rule 35(b) relief based on his rehabilitative efforts or health concerns.

The Court understands Weber’s frustration and is sympathetic to his situation. Weber’s “three and two-tenths of a second” decision has cost him a significant portion of his life.<sup>78</sup> Now, as the Legislature has had a change of heart, the statute used to convict and sentence Weber has been repealed. Unfortunately for Weber, the Legislature has not made that repeal retroactive and as a result Weber is required to

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<sup>74</sup> *Culp*, 152 A.3d at 146.

<sup>75</sup> *Id.* at 146-47.

<sup>76</sup> *State v. Lindsey*, 2020 WL 4038015, at \*2-3 (Del. Super. Ct. July 17, 2020) (citing *State v. Redden*, 111 A.3d 602, 608 (Del. Super. Ct. 2015)) (stating that “no special early release rule or procedure has been created to address the current COVID-19 health crisis...And merely invoking COVID-19 is simply inadequate to shoulder the heavy burden placed on one to establish ‘extraordinary circumstances’ under Rule 35(b)” and that “[i]t is indeed clear from Rule 35’s language itself that an inmate’s emergent medical situation ‘is not the stuff of which a claim of ‘extraordinary circumstances’ is made.’”).

<sup>77</sup> *Id.* at \*3.

<sup>78</sup> Def.’s Mot. for Reduction of Sentence, at ¶ 4, at 3.



carry out a sentence under a statute the Legislature no longer deems appropriate. This is also a case in which the Court agrees the mandatory sentence required to be imposed was out of proportion to the crime Mr. Weber committed. His case is a good example where placing sentencing restrictions on the judiciary can lead to an injustice. Mr. Weber is no saint, and his conviction was fair and just, but the sentence which the Court was required to impose was not. However, even with how unfortunate Weber's case has turned out to be, there is no relief which this Court can grant him.

### **III. Conclusion**

For the foregoing reasons, Weber's (1) Motion for Evidentiary Hearing is **DENIED**, and (2) Motion for Reduction of Sentence is **DENIED**.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.