

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

STATE OF DELAWARE	)	
	)	
v.	)	
	)	I.D. No. 1702011402
	)	
KEVIN T. GALE,	)	
	)	
Defendant.	)	

**ORDER**

Submitted: August 30, 2022  
Decided: September 20, 2022

**AND NOW TO WIT**, this 20<sup>th</sup> day of September, 2022, upon consideration of Defendant’s Motion for Reduction/Modification of Sentence, the sentence imposed upon Defendant, and the record in this case, it appears to the Court:

1. On July 10, 2017, Defendant pled guilty to Possession of a Firearm by a Person Prohibited (“PFPP”) and Possession of Ammunition by a Person Prohibited (“PAPP”).<sup>1</sup> On July 17, 2017, the State filed a Motion to Declare Defendant a Habitual Offender.<sup>2</sup> On August 25, 2017, Defendant was sentenced as a habitual offender to a total of fifteen years and six months at Level V, suspended after seven years and six months of minimum mandatory imprisonment, followed by eighteen months at Level III.<sup>3</sup> In an unrelated matter in March 2017, the late J.

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<sup>1</sup> Final Case Review: Pled Guilty. PSI Ordered, D.I. 12.  
<sup>2</sup> State's Motion to Declare Defendant a Habitual Offender, D.I. 16.  
<sup>3</sup> Sentence: ASOP Order Signed and Filed, D.I. 18

Parkins had imposed four months of prison under 11 *Del. C.* 4204(k) on a violation of probation (VOP).<sup>4</sup>

2. Defendant has filed several motions for modification of his sentence under Delaware Superior Court Criminal Rule 35(b).<sup>5</sup> The first motion was filed November 16, 2017.<sup>6</sup> That request was denied.<sup>7</sup> The second filed on November 18, 2019,<sup>8</sup> was also denied.<sup>9</sup> And a third request was summarily dismissed on November 10, 2021.<sup>10</sup>

3. In this newest motion, Defendant asks that his minimum mandatory sentence in this matter be permitted to run concurrently the VOP sentence imposed in 2017. Like prior requests for reduction/modification, the bases of this motion are that he has “completed numerous programs...obtained a high school diploma...and has not received any class 1 or 2 infractions....”<sup>11</sup>

4. Defendant is again reminded that under Superior Court Criminal Rule 35(b) “[t]he court *will not* consider repetitive requests for reduction of sentence.”<sup>12</sup>

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<sup>4</sup> Sentence: ASOP Order Signed and Filed, Crim. ID No. 1505015376, D.I. 46.

<sup>5</sup> Del. Super. Ct. Crim. R. 35(B).

<sup>6</sup> See Motion for Reduction/Modification of Sentence, D.I. 19.

<sup>7</sup> See Motion for Modification/Reduction of Sentence Denied, D.I. 20

<sup>8</sup> See Motion for Sentence Reduction/Modification of Sentence, D.I. 22.

<sup>9</sup> See Motion for Modification of Sentence Denied, D.I. 23.

<sup>10</sup> D.I. 25.

<sup>11</sup> Motion for Modification of Sentence, D.I. 26.

<sup>12</sup> Del. Super. Ct. Crim. R. 35(b) (emphasis added).

This motion is considered repetitive as preceded by an earlier Rule 35(b) motion.<sup>13</sup>

The bar to repetitive motions has no exception. It is absolute and flatly “prohibits repetitive requests for reduction of sentence.”<sup>14</sup> Therefore, where Defendant has previously submitted a Motion for Modification,<sup>15</sup> and where such motion was denied,<sup>16</sup> this motion is also barred as repetitive.<sup>17</sup> The Court cannot use its discretion to ignore this bar.<sup>18</sup>

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

/s/ Vivian L. Medinilla  
Vivian L. Medinilla  
Judge

oc: Prothonotary  
cc: Defendant  
Erika Flaschner, Esquire, Deputy Attorney General  
Investigative Services

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<sup>13</sup> *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

<sup>14</sup> *Thomas v. State*, 812 A.2d 900, 2002 WL 31681804, at \*1 (Del. 2002) (TABLE); *see also Jenkins v. State*, 954 A.2d 910, 2008 WL 2721536, at \*1 (Del. 2008) (TABLE) (affirming the Superior Court’s denial of defendant’s Rule 35(b) motion for modification where Rule 35(b) “prohibits the filing of repetitive sentence reduction motions.”); *Morrison v. State*, 846 A.2d 238, 2004 WL 716773, at \*2 (Del. 2004) (TABLE) (finding that defendant’s Rule 35(b) motion for modification “was repetitive, which also precluded its consideration by the Superior Court.”).

<sup>15</sup> *See* Motion for Reduction/Modification of Sentence, D.I. 19; Motion for Sentence Reduction/Modification of Sentence, D.I. 22.

<sup>16</sup> D.I. 20; D.I. 23; D.I. 25.

<sup>17</sup> Even if not repetitive, the Motion would have been denied where this Court reviewed the sentence imposed on August 25, 2017, and confirmed with the State and defense counsel that all prison time was to run consecutive.

<sup>18</sup> *Culp*, 152 A.3d at 145 (reversing the Superior Court’s decision to grant defendant’s Motion for Modification where the motion was repetitive and untimely).