

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

DARREL L. COPELAND,

Defendant.

)
)
)
)
)
)
)

ID No. 2003011505

Date Submitted: January 3, 2023

Date Decided: February 3, 2023

ORDER

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

1. On January 21, 2021, Defendant was found guilty of Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, and Resisting Arrest.² By Order April 26, 2022,³ effective March 23, 2020, Defendant was sentenced as follows: for Possession of a Firearm by a Person Prohibited, IN20-11-1658, 15 years Level V; for Possession of Ammunition by a Person Prohibited; IN20-04-0273, 8 years at Level V, suspended for 6 months at Level IV (DOC Discretion) hold at Level V until space is available at Level IV (DOC

¹ D.I. 37.

² D.I. 19.

³ D.I. 23.

Discretion); and for Resisting Arrest, IN20-04-0277, 1 year Level V suspended for 1 year Level III.

2. On January 3, 2023, Defendant filed the instant Motion, asking the Court, “is it ok I get in a rehabilitation or any program to modify my sentence in get some time reduce to be there for my mother and kids please and thanks.” In support of his Motion, Defendant cites: (1) he has diabetes; and (2) his mother is stressed and sick with a muscle disease.

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

4. Defendant filed this Motion more than 90 days after the imposition of his sentence, therefore it is time-barred under Rule 35(b).

5. 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 sentences.”⁵

⁴ *Croll v. State*, 2020 WL 1909193, at *1 (Del. Apr. 17, 2020) (TABLE) (affirming the Superior Court’s denial of a motion for modification of sentence where the motion was repetitive and filed beyond the 90-day limit); see *Hewett v. State*, 2014 WL 5020251, at *1 (Del. Oct. 7, 2014) (“When a motion for reduction of sentence is filed within ninety days of sentencing, the Superior Court has broad discretion to decide whether to alter its judgment.”).

⁵ *State v. Diaz*, 2015 WL 1741768, at *2 (Del. Apr. 15, 2015).

“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.”⁶ Mitigating factors that could have been presented at sentence, exemplary conduct, or successful rehabilitation while incarcerated does not constitute “extraordinary circumstances.”⁷

6. The Court does not find Defendant has established the existence of any “extraordinary circumstances” in his Motion. Furthermore, the DOC has not submitted an application pursuant to 11 *Del. C.* § 4217.

7. The Court finds that Defendant’s sentence is appropriate for all the reasons stated at the time of sentencing. No additional information has been provided to the Court that would warrant a modification of this sentence.

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

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

⁶ *State v. Culp*, 152 A.3d 141, 145 (Del. 2016) (internal quotations omitted) (quoting *Diaz*, 2015 WL 1741768, at *2).

⁷ *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)).

Original: Prothonotary

cc: Samuel B. Kenney, DAG
Darrel L. Copeland, SBI# 00618335