

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
v.)	ID No. 2307004229
)	
JAMAL S. WING,)	
)	
Defendant.)	
)	

Date Submitted: April 5, 2024

Date Decided: April 8, 2024

ORDER

Upon consideration of Defendant Jamal S. Wing’s (“Wing”) Motion for Sentence Modification (“Motion”),¹ Superior Court Criminal Rule 35(b), statutory and decisional law, and the record, **IT APPEARS THAT:**

(1) On February 14, 2024, Wing pled guilty to Assault Second Degree (IN23-07-0899) and Driving Under the Influence (“DUI”) (IN23-07-0902).² That same day, Wing was sentenced as follows: for Assault Second Degree, 8 years at Level V, with credit for 221 days previously served, suspended after 12 months for 1 year Level III; and for DUI, 2 years at Level V, suspended after 3 months for 1 year at Level III.³

¹ D.I. 14.

² D.I. 12.

³ D.I. 13. Wing’s probation is to run concurrently and his Level V sentence for DUI is pursuant to a mandatory minimum. *Id.*

(2) Wing filed the instant Motion on March 28, 2024.⁴ In his Motion, Wing requests that the Court modify the remainder of his Level V sentence to either Level IV or Level III GPS.⁵ In support of his Motion, Wing states that his father has received a terminal diagnosis and is in hospice.⁶

(3) The State opposes Wing's Motion.⁷ The State maintains that Wing's Level V sentence remains appropriate as "a necessary measure to protect the public from the threat posed by [Wing's] actions and to deter future recidivism."⁸

(4) Superior Court Criminal Rule 35(b) governs motions for modification or reduction of sentence.⁹ The purpose of Rule 35(b) is to "provide a reasonable period for the Court to consider alteration of its sentencing judgments."¹⁰ Rule 35(b) contains procedural bars for timeliness and repetitiveness.¹¹ Under Rule 35(b), the "[C]ourt may reduce a sentence of imprisonment on a motion made within 90 days after the sentence was imposed."¹² However, the Court cannot modify the minimum mandatory portion of a sentence.¹³

(5) Wing's Motion is not procedurally barred. His Motion was filed on

⁴ D.I. 14.

⁵ *Id.*

⁶ *Id.*

⁷ D.I. 16.

⁸ *Id.*

⁹ Super. Ct. Crim. R. 35(b).

¹⁰ *State v. Remedio*, 108 A.3d 326, 331 (Del. Super. 2014).

¹¹ *See* Super. Ct. Crim. R. 35(b).

¹² *Id.*

¹³ 11 *Del. C.* § 4204(d); D.I. 27.

March 28, 2024, within 90 days of his sentencing date, and is therefore timely.¹⁴

Also, this is Wing's first motion for sentence modification and thus not barred as repetitive.

(6) Rule 35(b) places the burden of proof on "the movant to establish cause to modify a lawfully imposed sentence."¹⁵ Although Rule 35(b) does not set forth specific criteria which must be met before the Court may grant a Rule 35(b) motion, "common sense dictates that the Court may modify a sentence if present circumstances indicate that the previously imposed sentence is no longer appropriate."¹⁶

(7) Wing's sentence of 3 months at Level V for DUI is a mandatory minimum sentence and the Court has no authority to reduce it.¹⁷

(8) This is Wing's third DUI offense.¹⁸ Wing drove while impaired and assaulted and injured two Delaware State Police officers during his arrest.¹⁹ He also bit and seriously injured a law enforcement K9.²⁰

(9) Based on the record, the Court finds Wing's sentence remains appropriate for all the reasons stated at the time of sentencing.

¹⁴ D.I. 12, D.I. 14.

¹⁵ *State v. Joseph*, 2018 WL 1895697, at *1 (Del. Super. Apr. 11, 2018).

¹⁶ *State v. Bailey*, 2017 WL 8787504, at *1 (Del. Super. Oct. 3, 2017).

¹⁷ *See* 21 Del. C. § 4177(d)(3).

¹⁸ *See* D.I. 16.

¹⁹ *Id.*

²⁰ *Id.*

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

IT IS SO ORDERED.

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

cc: Original to Prothonotary
Isaac Rank, DAG
Jamal S. Wing (SBI # 00254817)