

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 v.) ID No. 1707010054
)
 ANTONIO RUSSELL,)
)
 Defendant.)
)

Date Submitted: June 3, 2024
Date Decided: June 17, 2024

ORDER

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

(1) On August 21, 2018, Russell pled guilty to Manslaughter, Possession of a Firearm During the Commission of a Felony (“PFDCF”), and Possession of a Firearm by a Person Prohibited (“PFBPP”).² By Order dated January 25, 2019, effective July 25, 2017, Russell was sentenced as follows: for Manslaughter, 25 years at Level V,³ suspended after 12 years for 13 years at Level IV DOC DISCRETION, suspended after 6 months for 18 months at Level III; for PFDCF, 3

¹ D.I. 88.

² D.I. 35.

³ The first 2 years of this sentence are mandatory, and Russell is ordered to pay \$6000.00 in restitution to VCAP.

years at Level V;⁴ and for PFBPP, 8 years at Level V, suspended for 1 year at Level III.⁵ In total, Russell was sentenced to 15 years at Level V.⁶

(2) Russell filed the instant Motion on June 3, 2024.⁷ Russell states that he has completed various courses offered at James T. Vaughn Correctional Center in compliance with his sentence order directing him to complete “anger management, counseling, [and] treatment program[s].”⁸ He ask that the Court either suspend 1 year of his current Level V sentence or suspend his Level IV sentence for Level III probation.⁹

(3) Superior Court Criminal Rule 35(b) governs motions for modification of sentence.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 is imposed” and will consider untimely motions “only in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217.”¹² Furthermore, under Rule 35(b) “[t]he [C]ourt will not consider repetitive requests for reduction of sentence.”¹³

⁴ This is a mandatory sentence.

⁵ Russell’s Level V sentence is consecutive, and his probation is concurrent. D.I. 51.

⁶ *Id.*

⁷ D.I. 88.

⁸ *Id.*; *see* D.I. 51.

⁹ D.I. 88.

¹⁰ Super. Ct. Crim. R. 35(b).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

(4) Russell’s request as it pertains to his Level V sentence is time-barred. Russell’s Motion was filed on June 3, 2024,¹⁴ several years past the ninety-day window for filing a Rule 35(b) motion.¹⁵ The Court may only consider an otherwise time-barred Rule 35(b) motion in two circumstances: when a movant demonstrates “extraordinary circumstances” or when the motion is filed pursuant to 11 *Del. C.* § 4217.¹⁶ Russell has not identified any “extraordinary circumstances,”¹⁷ and his Motion was not filed pursuant to 11 *Del. C.* § 4217.

(5) Russell’s request to modify his Level IV sentence,¹⁸ a motion for modification of partial confinement, is not subject to Rule 35 time bar; however, it is subject to the Rule 35 bar against repetitive motions.¹⁹ This is Russell’s *fourth* Motion for Sentence Modification.²⁰ Pursuant to Rule 35(b), repetitive requests are prohibited.²¹

¹⁴ D.I. 88.

¹⁵ The Court sentenced Russell on January 25, 2019. D.I. 51.

¹⁶ Super. Ct. Crim. R. 35(b).

¹⁷ *See State v. Remedio*, 108 A.3d 326, 331 (Del. Super. 2014) (explaining that extraordinary circumstances must specifically justify the delay, be beyond the movant’s control, and be the reason the movant was prevented from timely filing).

¹⁸ D.I. 88.

¹⁹ *Teat v. State*, 31 A.2d 77 (TABLE), 2011 WL 4839042, at *1 (Del. 2011); *see also State v. Bennett*, 2015 WL 1746239, at *2 (Del. Super. Apr. 13, 2015) (“While [Defendant’s] motion – one seeking modification of a term of partial confinement or probation – is not subject to Rule 35’s 90–day time bar, it can and should be denied because it is repetitive.”).

²⁰ *See* D.I. 54, 60, 79.

²¹ *See* Super. Ct. Crim. R. 35(b).

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

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

Original to Prothonotary

cc: Matthew B. Frawley, DAG
Antonio Russell (SBI #00836045)