

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

STATE OF DELAWARE, )  
 )  
 v. ) ID No. 2312011530  
 )  
 NASIR SIMMONS, )  
 )  
 Defendant. )

**ORDER**

On this 13th day of November, 2024, upon consideration of Defendant Nasir Simmons’s (“Defendant”) *pro se* Motion for Sentence Modification (the “Motion”) made pursuant to Superior Court Rule of Criminal Procedure (“Rule”) 35(b),<sup>1</sup> the sentence imposed upon Defendant, and the record in this case, it appears to the Court that:

1. On June 26, 2024, the Court sentenced Defendant to: (1) Possession of a Firearm During Commission of a Felony, ten years of Level V supervision, suspended after three years for two years of Level III supervision; and (2) Attempted Assault in the First Degree, ten years of Level V supervision, suspended after two years for two years of Level III supervision.<sup>2</sup>

2. On August 27, 2024, Defendant filed this Motion, in which he asked this Court to remove his two-year unsuspended Level V sentence for Attempted

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<sup>1</sup> D.I. 15 (the Motion).  
<sup>2</sup> D.I. 14 (Sentence Order).

Assault in the First Degree and replace it with either two years of Level III probation or one year of Level IV home confinement.<sup>3</sup> According to Defendant, he should receive the modification because (1) he was acting in self-defense and the defense of his family when he committed the crimes; (2) he does not have a criminal history as an adult; and (3) he is the sole source of income for his family.<sup>4</sup>

3. When considering a motion for modification of sentence, this Court addresses any applicable procedural bars before turning to the merits.<sup>5</sup> This Motion is Defendant's first motion seeking modification of sentence, so it is not barred as a repetitive request.<sup>6</sup> It is also filed within the 90-day limit on modification of imprisonment sentence.<sup>7</sup> The Motion is thus procedurally proper.

4. Nonetheless, Defendant's Motion fails because his requested relief conflicts with the statutory minimum sentence for his conviction. The conviction of Attempted Assault in the First Degree, a class B felony,<sup>8</sup> carries a minimum mandatory sentence of two years of incarceration at Level V.<sup>9</sup> Defendant was given

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<sup>3</sup> D.I. 15.

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

<sup>5</sup> *State v. Redden*, 111 A.3d 602, 606 (Del. Super. 2015).

<sup>6</sup> *See Gladden v. State*, 2020 WL 773290, at \*2 (Del. Feb. 17, 2020) ("The Superior Court will not consider repetitive motions for sentence reduction.").

<sup>7</sup> Super. Ct. Crim. R. 35(b).

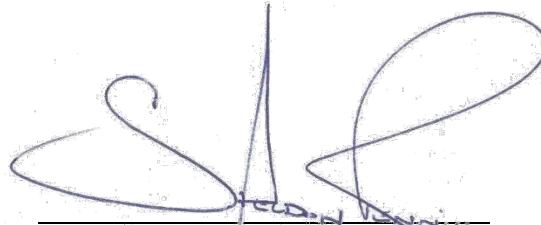
<sup>8</sup> *See* 11 Del. C. §§ 531 ("Attempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting."), 613(c) ("Assault in the first degree is a class B felony.").

<sup>9</sup> *See* 11 Del. C. § 4205(b)(2).

the minimum sentence of two years of unsuspended time at Level V, so the Court is without authority to further remove or reduce his sentence.

5. Defendant's sentence is appropriate for all the reasons stated at sentencing. For the foregoing reasons, Defendant's Motion for Sentence Modification is hereby **DENIED**.

**IT IS SO ORDERED.**



Sheldon K Rennie, Judge

Original to Prothonotary

Cc: Nasir Simmons (SBI#01027725)