

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
	)	I.D. No. 1401003084
v.	)	
	)	
	)	
KEITH BROWN,	)	
	)	
Defendant.	)	

ORDER

1. This will mark one of the earlier decisions to consider the recently revised 11 Del. C §4217. For the reasons that follow, the Court denies the relief requested.

2. Section 4217 was originally passed by the General Assembly as a part of the “Truth in Sentencing Act of 1989.” Back then it was a provision providing for “compassionate relief.” It allowed the Department of Corrections (“DOC”) to petition the Court for reduction of criminal sentences for 3 reasons: 1) “exceptional rehabilitation,” 2) the inmate’s medical condition or 3) prison overcrowding. It eliminated the availability of parole for sentences imposed after the effective date of the Act.¹ It also provided that the Court would retain jurisdiction over a sentence to

¹ 135 Del. Laws, Ch. 130, Section 7.

modify it “solely on the basis of an application filed by the Department of Correction (“DOC”) for good cause shown.” An application was to include certification by DOC that an inmate’s release did not constitute a threat to public safety.²

3. Despite the elimination of parole, the statute was revised in 1994 to give the Board of Parole a more robust role in section 4217 applications. DOC’s application under section 4217 would be required to pass through the Board of Parole, which would solicit the input of the Attorney General. If DOC did not initiate, or the Parole Board did approve the application, it would never get to Superior Court.³

4. In 2010, the criterion of “exceptional rehabilitation” was amended to remove the word “exceptional.” According to the preamble to the amendment, the General Assembly noted that “the lack of proper definition has led to confusion by DOC which must make an initial determination regarding rehabilitation of an inmate.”⁴

5. It is significant that cases arising under section 4217 that actually reached Superior Court prior to 2025 were exceedingly rare. Whether this was because DOC did not seek them at all, or because the Board of Parole did not approve

² See 67 Del. Laws 1990, Ch. 350 §4-6.

³ 1994 Del. Laws ch. 311.

⁴ 77 Del. Laws 2010, Ch. 362

them is not known or particularly relevant. What is known is that until 2025, there were very few cases brought under section 4217 and no decisional law interpreting the “good cause” criterion of section 4217.

6. There is no doubt that the 2025 amendments to section 4217 were intended to broaden the availability of section 4217 and to remove the restriction of DOC or the Board of Parole for an application to proceed to Superior Court. Under the amended process, any inmate that has served at least half his sentence for a “violent felony” and has served all of any minimum mandatory sentence⁵ may apply directly to the Court for relief, unhampered by the previously required approvals of DOC or the Board of Parole. As rewritten, the Court “retains jurisdiction” to modify any sentence in excess of one year to reduce the period of incarceration.⁶

7. One vestige of the prior statute is that DOC is required to state its recommendation as to the *pro se* or counseled application.⁷ DOC is required to advise the Court whether DOC believes there is “good cause” for a modification and whether release of the inmate will constitute a substantial risk to 1) the community,

⁵ 11 Del. C. §4217(a)(5). See 11 Del. C. §4201(c)(definition of violent felonies). While not applicable to this case, certain inmates who have served decades in jail are exempt from the limitation of subsection (a)(5). 11 Del. C. §4217(a)(3).

⁶ 11 Del. C. §4217(a)(2).

⁷ 11 Del. C. §4217(d)(2).

2) a victim or witness or 3) the applicant for relief.⁸ If DOC does not support the application, it must state why it does not.⁹

8. Brown meets the criteria of section 4217(a)(2) and 4217(a)(5) to apply for modification. He was sentenced to more than one year of incarceration, has served at least one half of the originally imposed sentence and he has completed all minimum mandatory portions of the sentence. DOC has supported his application by its certification that it believes the Defendant is not a substantial risk to the public.

9. Just as DOC is required to certify this conclusion, the Court is likewise required to “find” that release of the inmate would not be a substantial risk to the community, the victim, or the inmate. The basis upon which this “finding” is to be made is left unidentified in the statute. Certainly, the Court can look at the recommendation of DOC, but there is little else to consult, surely because the Defendant has been in DOC’s custody for the past 12 years. DOC’s endorsement is supported by an apparent lack of institutional write ups while in DOC custody, his consistent employment at various institutional “jobs,” his completion of “compulsory evidence-based Risk, Needs, Responsivity targeted intervention programming identified by the Department’s validated assessments that positively impact recidivism reduction,” and the time he has served already: 12 years.

⁸ 11 Del. C. §4217(d)(1)b.

⁹ 11 Del. C. §4217(d)(3).

10. Exactly what these programs are or how they reduce the risk to the community are not further expanded, but neither are they contested by the Department of Justice. Perhaps there will be a case in which these findings by DOC should be further examined, but certainly this record does not give the Court any reason to negate or undermine DOC's conclusions.

11. Section 4217(b)(4) directs the Court to review:

“the facts of an offense that is the subject of the sentence modification, including the underlying circumstances and nature of the offense, the felony classification of the offense, the length of the underlying sentence.”

12. In 2014, Mr. Brown was sentenced to 20 years in prison, half of which was minimum mandatory: 10 years (non-mandatory) for Assault Second Degree, 5 years (mandatory) for Possession of a Firearm During Commission of a Felony, and 5 years (mandatory) for Possession of a Firearm by a Person Prohibited, all followed by decreasing levels of community supervision.

13. The facts of the offense for which he was sentenced are disturbing. Mr. Brown approached an individual on the street, grabbed him around the neck and put a gun to his head, ordering him to get into the trunk of a car. When the man refused, Brown shot him in the abdomen. Indicted for attempted murder and related firearms charges, he pled guilty to Assault Second Degree and the two gun charges previously mentioned.

14. Were this a “one off” criminal act for Mr. Brown, those would be “bad facts.” But it was not a one off. Rather, by the time of this shooting, he had compiled a juvenile record of multiple felony arrests and adjudications. In 2007 he pled guilty to Possession of a Firearm During Commission of a Felony as a “non-amenable” juvenile. Those charges resulted from his gratuitous shooting of a store clerk in a corner store in Wilmington.

15. In the few brief months after his release from that 5-year sentence, he picked up charges involving drug dealing and a chase with police. It appears these charges were washed out in the street shooting to which he pled guilty here. In this case, the parties agreed to recommend 15 years in jail. After reviewing the presentence report and considering the arguments of counsel, the Court found that 20 years was more appropriate.

16. Although the statute invites the Court to consider the rehabilitation of the defendant in support of the requirement of a “good cause” finding in support of modification of a sentence, it does not mandate modification merely because rehabilitation is found. The Court retains the right to consider the facts of the charges of conviction, the defendant’s prior history, and all the other factors that contribute to arriving at a fair and just sentence.

17. The statute explains that “good cause includes rehabilitation of the person, serious medical illness or infirmity of the person, and prison overcrowding.”

It is important to recognize that the finding required is not whether there is “good cause” to believe the inmate has been rehabilitated during his prison term. Rather, the question is whether there is “good cause” to modify the sentence. That decision rests on not only the rehabilitation of the inmate, but also the goals of sentencing generally.

18. It is a fair point that some sentences are imposed less for their retributive value than their rehabilitative value. Society is far better served, for example, when the drug addict receives appropriate treatment to resist his desire for drugs than simply putting him in jail for a period of time. The scales of justice are not put in balance by a substantial jail sentence for a drug addict who is as much a harm to himself as he is to society.

19. In other cases, the availability of rehabilitation is a less important consideration than making the sentence express society’s outrage and the gravity of the harm caused by the Defendant’s conduct. In the Court’s view, this is such a case. At that point in his life, Mr. Brown was a shooter of innocents. Assuming he has matured, his maturation does not diminish the harm done. When a citizen commits an act of such violence upon another, that citizen should not be surprised that the consequences may be rather severe. These are essential goals in sentencing: retribution and deterrence. That the Defendant has made sufficiently good use of his

time in prison for DOC to feel that he is no longer a danger is all to the better. In fact, DOC was established “to provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community.”¹⁰ That DOC has done what it was established to do and Defendant has made good use of his time is certainly worthy of recognition. Nonetheless, in this case, the Court believes the penalty imposed was proportionate to the Defendant’s conduct and the harm done. The Court is not impressed that the Defendant’s rehabilitation is of sufficient note to warrant a finding of “good cause” for modification of the sentence.

20. In addition to the Court’s sense that the sentence remains the one that is fair and just, in 2025 the Defendant placed the very same arguments before the Board of Commutations – an executive branch agency with co-extensive reach over modification of Defendant’s sentence – and was rebuffed. The Court has concerns about the dual availability of relief from both the executive and judicial branch at the same time, but that is the scheme enacted by the General Assembly. The executive branch controls DOC and is obviously in a better position than the Court to assess the efficacy of rehabilitative programming offered by DOC. But the Board was unconvinced that good cause existed to reduce the sentence in 2025. The Court,

¹⁰ 11 Del. C. §6502(a).

which takes on faith DOC's view of Defendant's rehabilitation, likewise concludes that good cause for reduction of his sentence has not been shown.

IT IS SO ORDERED this 31st day of August 2026.

/s/ Charles E. Butler
Charles E. Butler, Resident Judge

cc: Charles M. Oberly, III, Senior Advisor to the Attorney General
Ambria N. Smith, Esquire
Keith Brown