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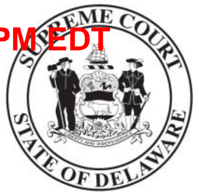


**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| **STATE OF DELAWARE,** | ) | |
| | ) | |
| Plaintiff-Below, | ) | |
| Appellant, | ) | |
| | ) | |
| v. | ) | No. 249, 2016 |
| | ) | |
| | ) | |
| **CATHERINE CULP**, | ) | |
| | ) | |
| Defendant-Below, | ) | |
| Appellee. | ) | |

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

**STATE'S REPLY BRIEF**

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Dated: August 16, 2016

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## I. THE SUPERIOR COURT ABUSED ITS DISCRETION BY CONSIDERING, AND GRANTING, CULP'S REPETITIVE AND UNTIMELY MOTION FOR REDUCTION OF SENTENCE.

Culp argues that "[t]he meaning of 'repetitive' . . . is not synonymous to any event occurring more than once," *Ans. Brf.* at 9. She is incorrect. This Court has repeatedly, and consistently held that second motions for sentence modification are "repetitive" as that term is used in Rule 35.[1] Culp moved for modification in 2003, (DI 141), and the judge who presided over her trial denied that motion. DI 144. She filed her second motion for modification twelve years later, in 2015. DI 161. Pursuant to the express language of Rule 35 and the guidance provided by this Court, Culp's 2015 motion was repetitive and, thus, procedurally barred. The Superior Court abused its discretion by ignoring its own rules of procedure.

Culp contends that a proper application of Rule 35's procedural bar would "conflict with Superior Court's reservation of authority to consider untimely sentence reductions where extraordinary circumstances otherwise exist." *Ans. Brf.* at 10. This, too, is incorrect. The State recognizes that the Superior Court may consider the existence of extraordinary circumstances when assessing untimely

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[1] *Valentine v. State*, 2014 WL 7894374, at *1 (Del. Dec. 31, 2014); *Teat v. State*, 2011 WL 4839042, at *1 (Del. Oct. 12, 2011); *Jenkins v. State*, 2008 WL 2721536, at *1 (Del. Jul. 14, 2008); *Cochran v. State*, 2005 WL 3357633, at *1 (Del. Dec. 8, 2005); *Ferguson v. State*, 2003 WL 21519872, at *1 (Del. Jul. 3, 2003); *Thomas v. State*, 2002 WL 31681804, at *1 (Del. Nov. 25, 2002).

motions for sentence reduction.[2] The rule prohibits consideration of repetitive requests.[3] These procedural bars do not conflict because the "extraordinary circumstances" contemplated by Rule 35 are circumstances "justifying the delay," "beyond a petitioner's control," that prevented a timely application.[4] Thus, items within a petitioner's control – rehabilitative efforts – are not "extraordinary circumstances," while things outside a petitioner's control – deportation consequences – may qualify as extraordinary circumstances.[5]

Culp contends that "[t]he State fails to recognize that rehabilitation within 90 days of sentencing for an offense of murder second degree requiring a minimum sentence of at least thirteen years imprisonment is an unrealistic condition." *Ans. Brf.* at 14. The State readily acknowledges that rehabilitation for any offense may be a lengthy process. It is for this reason that the State maintains that, while rehabilitative efforts do not constitute "extraordinary circumstances" pursuant to Rule 35, an offender's rehabilitation may be considered pursuant to Title 11, Section 4217.[6] The position advanced by the State here is consistent with the plain language

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[2] Super. Ct. Crim. R. 35 (The Superior Court may consider applications made more than 90 days after imposition of sentence where extraordinary circumstances exist).

[3] *Id.*

[4] *State v. Diaz*, 2015 WL 1741768, at *2 (Del. Apr. 15, 2015) (quoting *State v. Lewis*, 797 A.2d 1198, 1205 (Del. 2002) (Steele, J., dissenting)); *see also State v. Remedio*, 108 A.3d 326, 332 (Del. Super. 2014) (citing to same definition of "extraordinary circumstances").

[5] *Compare Morgan v. State*, 2012 WL 311539 (Del. Jul. 31, 2012) *with Lewis*, 797 A.2d 1198.

[6] 11 *Del. C.* § 4217(c).

of Rule 35 which allows for consideration of an untimely application "in extraordinary circumstances or pursuant to 11 Del. C. § 4217."[7]

Culp further argues that "[t]he State . . . has not shown that § 4217 is utilized by the Department of Correction for exceptional rehabilitation with any frequency" (*Ans. Brf.* at 14) and that Superior Court rarely finding extraordinary circumstances to exist in untimely Rule 35 motions "is not the same as saying they are legally barred . . . ." *Ans. Brf.* at 13. Culp's arguments are unavailing. While Section 4217 may not be frequently utilized, the procedure exists. And, importantly, pursuant to Rule 35, Section 4217 is the only vehicle by which an offender may present her rehabilitation efforts as a basis for sentence reduction.

The Superior Court rejected Delaware Supreme Court precedent by finding Culp's rehabilitative efforts demonstrated "extraordinary circumstances" that warranted consideration of her untimely, repetitive Rule 35 motion for sentence modification. The Superior Court abused its discretion when it ignored recognized rules of law and Superior Court practice to grant Culp's untimely motion based upon her rehabilitative efforts.[8]

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[7] Super. Ct. Crim. R. 35(b).

[8] *See Harper v. State*, 970 A.2d 199, 201 (Del. 2009).

## CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below and direct the Superior Court to vacate its April 18, 2016 Opinion modifying Culp's sentence.

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Dated: August 16, 2016

## CERTIFICATE OF SERVICE

I, Sean P. Lugg, Esq., do hereby certify that on August 16, 2016, I caused a copy of the State's Reply Brief to be served electronically upon the following:

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