

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

<b>STATE OF DELAWARE,</b>	)	
	)	
	)	
<b>v.</b>	)	<b>ID Nos. 1402002496</b>
	)	
	)	
<b>LUIS G. CRUZ,</b>	)	
	)	
<b>Defendant.</b>	)	

Submitted: April 27, 2015  
Decided: May 26, 2015

**ORDER DENYING MOTION TO REDUCE SENTENCE**

This 26<sup>th</sup> day of May, 2015, upon consideration of the Defendant’s Motion for Sentence Reduction, and the record in this matter, it appears to the Court that:

(1) On September 2, 2014, Luis G. Cruz pleaded guilty to Drug Dealing – Heroin (as a class B felony), Drug Dealing – Marijuana, and Possession of a Firearm by a Person Prohibited (“PFBPP”), and joined with the State on a sentencing recommendation.<sup>1</sup> He did so in exchange for

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<sup>1</sup> Plea Agreement and TIS Guilty Plea Form, *State v. Luis G. Cruz*, ID No. 1402002496 (Del. Super. Ct. Sept. 2, 2014) (“Parties agree to recommend no less than 15 years Level 5 (unsuspended).”).

dismissal of the remaining indicted charges and the favorable joint sentencing recommendation (the State's withholding of a habitual criminal petition<sup>2</sup> and Mr. Cruz's agreement to seek not less than 15 years imprisonment).<sup>3</sup> His sentencing occurred several months later, on December 5, 2014, after a pre-sentence investigative report was prepared. Mr. Cruz was sentenced to serve: (1) drug dealing (heroin) – 25 years at Level V suspended after serving five years for diminishing levels of supervision and intensive probation; (2) PFBPP – 15 years at Level V suspended after serving 10 years at Level V for intensive probation; and (3) drug dealing (marijuana) – 8 years at Level V suspended in its entirety for intensive probation.<sup>4</sup> The first twelve years of Mr. Cruz's cumulative sentence are

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<sup>2</sup> DEL. CODE ANN. tit. 11, § 4214(b) (2014) (providing that a person who has been twice previously convicted of certain enumerated felonies and is thereafter convicted again of one of those felonies may, upon the State's petition, be declared a habitual criminal offender; the Court must then impose a sentence of life imprisonment for that subsequent felony).

<sup>3</sup> Plea Agreement, at 1 (“Defendant is eligible to be sentenced as a habitual offender pursuant to 11 Del. C. §4214(b). State agrees not to request mandatory life sentence pursuant to 4214(b) in return for defendant's entry of a guilty plea and agreement not to request less than 15 years Level 5 at sentencing.”).

<sup>4</sup> Sentencing Order, *State v. Luis G. Cruz*, ID No. 1402002496 (Del. Super. Ct. Dec. 5, 2014).

comprised of minimum terms of incarceration that must be imposed and cannot be suspended.<sup>5</sup>

(2) Mr. Cruz filed no direct appeal from his convictions or sentence.

(3) Instead, he docketed the present motion under Superior Court Criminal Rule 35(b) requesting reduction of his cumulative 15-year Level V term by three years.<sup>6</sup> In short, Mr. Cruz asks the Court to suspend all but the minimum terms required by statute.<sup>7</sup> According to Mr. Cruz, his term of imprisonment should be reduced because he: (1) needs substance abuse

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<sup>5</sup> DEL. CODE ANN. tit. 16, § 4752(1) (2014) (drug dealing a Tier 4 quantity of heroin is a class B felony); *id.* at tit. 11, §§ 4205(b)(2) & (d) (sentence “[f]or a class B felony [is] not less than 2 years . . . [and any] minimum, mandatory, mandatory minimum or minimum mandatory sentence [ ] required by subsection (b) of [§ 4205] . . . shall not be subject to suspension by the court”); *id.* at § 1448(e)(1)(c) (providing for a minimum sentence of “[t]en years at Level V, if the person [convicted of PFBPP] has been convicted on 2 or more separate occasions of any violent felony”).

<sup>6</sup> Super. Ct. Crim. R. 35(b) (providing that, under certain conditions, the court may reduce a sentence of imprisonment on an inmate’s motion); *Jones v. State*, 2003 WL 21210348, at \*1 (Del. May 22, 2003) (“There is no separate procedure, other than that which is provided under Superior Court Criminal Rule 35, to reduce or modify a sentence.”).

<sup>7</sup> Def.’s Rule 35(b) Mot., at 3. Mr. Cruz appears to recognize that the two-year minimum term for drug dealing in heroin cannot be reduced under Rule 35(b); nor can the ten-year minimum for PFBPP. *State v. Sturgis*, 947 A.2d 1087, 1092 (Del. 2008) (“Superior Court Rule of Criminal Procedure 35(b) provides no authority for a reduction or suspension of the mandatory portion of a *substantive* statutory minimum sentence.”) (emphasis in original).

treatment; (2) has a mental health issue; (3) is a small business owner; and (4) has family responsibilities.<sup>8</sup>

(4) The Court may consider such a motion “without presentation, hearing or argument.”<sup>9</sup> The Court will decide this motion on the papers filed. When considering motions for sentence reduction, this Court addresses any applicable procedural bars before turning to the merits.<sup>10</sup> Having reviewed the entirety of the record here, the Court finds there are no bars to the consideration of Mr. Cruz’s first request under Rule 35(b).<sup>11</sup>

(5) The purpose of Superior Court Criminal Rule 35(b) historically has been to provide a reasonable period for the Court to consider alteration of its sentencing judgments.<sup>12</sup> Where a motion for reduction of sentence of imprisonment is filed within 90 days of sentencing, the Court has broad discretion to decide if it should alter its judgment.<sup>13</sup> “The reason for such a

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<sup>8</sup> Def.’s Rule 35(b) Mot., at 2.

<sup>9</sup> Super. Ct. Crim. R. 35(b).

<sup>10</sup> *State v. Redden*, 111 A.3d 602, 606 (Del. Super. Ct. 2015).

<sup>11</sup> Mr. Cruz’s Rule 35(b) motion was first received by the Prothonotary for docketing on February 23, 2015 – 80 days after his sentencing. *See* Att. to Def.’s Rule 35(b) Mot.

<sup>12</sup> *Johnson v. State*, 234 A.2d 447, 448 (Del. 1967) (per curiam).

<sup>13</sup> *Hewett v. State*, 2014 WL 5020251, at \*1 (Del. Oct. 7, 2014) (“When, as here, a motion for reduction of sentence is filed within ninety days of sentencing, the Superior Court has broad discretion to decide whether to alter its judgment.”).

rule is to give a sentencing judge a second chance to consider whether the initial sentence is appropriate.”<sup>14</sup>

(6) The Court has examined Mr. Cruz’s claim – *i.e.*, his request that the Court reconsider and decide if, on further reflection, its sentence now seems unduly harsh – on the merits. Under every iteration of Delaware’s criminal rules governing motions to reduce sentences, such entreaties are addressed to the sound discretion of this Court.<sup>15</sup>

(7) It is worth mentioning first that Mr. Cruz expressly agreed to the sentence imposed (“Parties agree to recommend no less than 15 years Level 5 (unsuspended) . . . State agrees not to request mandatory life sentence pursuant to 4214(b) in return for defendant’s entry of a guilty plea and agreement not to request less than 15 years Level 5 at sentencing”),<sup>16</sup> obtained the benefit of that express agreement, and then, only 80 days

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<sup>14</sup> *State v. Remedio*, 108 A.3d 326, 331 (Del. Super. Ct. 2014) (internal citations and quotations omitted) (such a request is essentially a plea for leniency: an appeal to the sentencing court to reconsider and show mercy). *See also State v. Tinsley*, 928 P.2d 1220, 1223 (Alaska Ct. App. 1996) (explaining under Alaska’s then-extant 120-day rule, that a court’s “authority can be exercised even when there is no reason to reduce the sentence other than the judge’s decision to reconsider and show mercy”).

<sup>15</sup> *Hewett*, 2014 WL 5020251, at \*1. *See also Shy v. State*, 246 A.2d 926 (Del. 1968); *Lewis v. State*, 1997 WL 123585, at \*1 (Del. Mar. 5, 1997).

<sup>16</sup> Plea Agreement and TIS Guilty Plea Form, *State v. Luis G. Cruz*, ID No. 1402002496 (Del. Super. Ct. Sept. 2, 2014) (“Parties agree to recommend no less than 15 years Level 5 (unsuspended).”).

thereafter, expressly asked the Court to undercut that agreement for him by striking three years from his sentence. While not controlling, that is a proper factor for the Court to weigh when, as here, it is considering a timely Rule 35(b) motion.<sup>17</sup>

(8) That said, the Court has fully reviewed Mr. Cruz's application, the record of his case, Mr. Cruz's prior supervision history, and all sentencing information available. The Court has considered: (1) Mr. Cruz's statutory habitual criminal status that would have required a natural life sentence had the State moved for such; and (2) that this was a negotiated plea and sentencing recommendation. The Court further notes Mr. Cruz's demonstrated lack of amenability to community supervision as evidenced by his numerous previous violations of probation related to his prior robbery and drug offenses. After thorough review of the merits of Mr. Cruz's request, the Court finds its original sentencing judgment is appropriate for the reasons stated at the time it was rendered.

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<sup>17</sup> *State v. Colburn*, 2015 WL 1881181, at \*3 (Del. Super. Ct. Apr. 24, 2015) (citing *Rondon v. State*, 2008 WL 187964, at \*1 (Del. Jan. 15, 2008) and *Lake v. State*, 1984 WL 997111, at \*1 (Del. Oct. 29, 1984)) (the "sound discretion" this Court exercises in determining the merits of a timely Rule 35(b) motion is coextensive with the discretion this Court exercises when first imposing the subject sentence; as such, that "wide discretion" includes the latitude to consider "almost any factor" in making a sentencing reduction decision).

(9) Accordingly, the Court will exercise its discretion under Rule 35(b)<sup>18</sup> and **DENY** Mr. Cruz's request to reduce his term of imprisonment.

**SO ORDERED this 26<sup>th</sup> day of May, 2015.**

*/s/ Paul R. Wallace*  
**PAUL R. WALLACE, JUDGE**

Original to Prothonotary

cc: Cynthia F. Hurlock, Deputy Attorney General  
Timothy J. Weiler, Esquire  
Mr. Luis G. Cruz, *pro se*  
Investigative Services Office

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<sup>18</sup> *Rondon*, 2008 WL 187964, at \*1 (“The merit of a sentence modification under Rule 35(b) is directed to the sound discretion of the Superior Court.”).