

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	
)	
v.)	
)	I.D. No. 2009010616
ZAKIER SMITH,)	
)	
Defendant.)	

ORDER

Submitted: May 3, 2023
Decided: July 6, 2023

AND NOW TO WIT, this 6th day of July 2023, upon consideration of Zakier Smith (“Defendant”)’s Motion for Modification/Reduction of Sentence under Rule 35, the sentence imposed upon the defendant, and the record in this case, it appears to the court that:

1. On January 18, 2023, Defendant pled guilty to Gang Participation, Assault Second Degree, and Possession of a Firearm During the Commission of a Felony (“PFDCF”).¹ On March 24, 2023, he was sentenced to: (1) for Gang Participation, 3 years at Level V, suspended for 1 year at Level III; (2) for Assault Second Degree, 8 years at Level V, suspended after 2 years at Level III; and (3) for PFDCF, 25 years at Level V, suspended after 3 years for transitioning

¹ D.I. 59. Defendant also pled guilty to Violation of Probation for Gang Participation. *Id.*

levels of probation.²

2. On May 1, 2023, Defendant filed a Motion for Modification/Reduction of Sentence, asking the Court to run his last 6 months of Level V time concurrently with his Level IV time because he will already be serving a Level IV sentence,³ while enrolled in the Key Program.

3. Under Superior Court Criminal Rule 35(b), the Court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed.⁴ “Rule 35(b) allows for a reduction of sentence without regard to the existence of a legal defect.”⁵ Accordingly, a timely and non-repetitive Rule 35(b) motion is “essentially a ‘plea for leniency.’”⁶

4. Although Defendant’s Motion was filed within 90 days of sentencing—and not time-barred—Defendant is still serving the minimum mandatory period of his sentence. So, although the Court generally has wide discretion to reduce a sentence upon this timely Rule 35(b) application, the Court has no authority to reduce or suspend the mandatory portion of any substantive minimum sentence.⁷ Further, DOC confirmed via email that it has

² D.I. 62.

³ D.I. 64.

⁴ Del. Super. Ct. Crim. R. 35(b).

⁵ *State v. Lewis*, 797 A.2d 1198, 1201 (Del. 2002).

⁶ *Id.* at 1202 (quoting *United States v. Maynard*, 485 F.2d 247, 248 (9th Cir. 1973)).

⁷ *State v. Sturgis*, 947 A.2d 1087, 1092 (Del. 2008) (“Superior Court Rule of Criminal Procedure

not been decided whether Defendant's last six months of Level V time will be substituted with a Level IV program.⁸

5. The Court afforded leniency when it imposed the minimum mandatory sentence. Thus, Defendant's sentence is appropriate for all the reasons set forth at sentencing.

IT IS SO ORDERED that Defendant's Motion for Sentence Modification/Reduction is **DENIED**.

/s/Vivian L. Medinilla
Vivian L. Medinilla
Judge

oc: Prothonotary
cc: Defendant
Department of Justice
Investigative Services

35(b) provides no authority for a reduction or suspension of the mandatory portion of a *substantive* statutory minimum sentence.”) (emphasis in original).

⁸ See D.I. 65.