

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

STATE OF DELAWARE	)	
	)	
v.	)	
	)	I.D. No. 2109011186
	)	
LUIS LEVANTE,	)	
	)	
Defendant.	)	

**ORDER**

Submitted: April 18, 2023  
Decided: May 17, 2023

**AND NOW TO WIT**, this 17th day of May 2023, upon consideration of Luis Levante (“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 June 21, 2022, Defendant pled guilty to Possession of a Firearm During the Commission of Felony (PFDCF) and Reckless Endangering First Degree.<sup>1</sup> On January 20, 2023, Defendant was sentenced for PFDCF to 25 years at Level V, suspended after 3 years, for transitioning levels of probation.<sup>2</sup> For Reckless Endangering First Degree, he received 5

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<sup>1</sup> D.I. 12.

<sup>2</sup> Although the parties originally believed a prior conviction from Puerto Rico would expose Defendant to a five-year minimum sentence as reflected in the Truth-In-Sentencing paperwork, at the time the plea agreement was entered, it was agreed that a three-year minimum sentence applied

years at Level V, suspended for 2 years at Level III.<sup>3</sup>

2. On April 14, 2023, Defendant filed a Motion for Modification/Reduction of Sentence, asking the Court to suspend his Level V sentence upon completion of his “intense behavioral modification program,” due to improved conduct he attributes to full compliance with that programming.<sup>4</sup>

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.<sup>5</sup> “Rule 35(b) allows for a reduction of sentence without regard to the existence of a legal defect.”<sup>6</sup> Accordingly, a timely and non-repetitive Rule 35(b) motion is “essentially a ‘plea for leniency.’”<sup>7</sup>

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

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instead.

<sup>3</sup> D.I. 14.

<sup>4</sup> D.I. 15 (stating that Defendant has mental health and substance abuse issues).

<sup>5</sup> Del. Super. Ct. Crim. R. 35(b).

<sup>6</sup> *State v. Lewis*, 797 A.2d 1198, 1201 (Del. 2002).

<sup>7</sup> *Id.* at 1202 (quoting *United States v. Maynard*, 485 F.2d 247, 248 (9th Cir. 1973)).

minimum sentence.<sup>8</sup>

5. Furthermore, 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

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<sup>8</sup> *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).