

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**JOHN A. PARKINS, JR.**  
*JUDGE*

**NEW CASTLE COUNTY COURTHOUSE  
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August 20, 2013

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Re: State v. Itius D. Wynn  
ID No. 0910022262  
(Corrected Letter)

Dear Counsel:

Defendant has filed a Rule 35 motion seeking a reduction of the 24 year sentence imposed by the court on August 27, 2010. The primary basis for his motion is that (1) the court did not accord sufficient weight to Mr. Wynn's educational and employment efforts prior to his arrest; (2) the court made an error of material fact when it concluded that Defendant was terminated from a job program prior to his arrest because of his poor attendance; (3) the court made another error of material fact when it concluded that Defendant did not accept responsibility for his acts; and (4) Defendant's "extraordinary" efforts at rehabilitation since his conviction

warrant a reduction in sentence. For the reasons which follow, the court concludes that the first contention is procedurally barred and the remaining contentions are without merit.

### **Defendant's Crime**

On Halloween night in 2009, twenty-five year old Dominique Daniago was entertaining friends at her home on Howland Street in Wilmington. During the party Ms. Daniago was approached by a Defendant and another Hispanic male, who asked her if they could join the party. She refused because she did not know them. A verbal exchange followed between the two males and some of the guests at the party, during which one of the guests hurled a racial epithet about President Obama. The two males told the partygoers they would be back.

Roughly 15 minutes later the males returned. They encountered some of the partygoers outside Ms. Daniago's home. Defendant, who had a .357 magnum with him, told the partygoers "I want to know who is the racist mother fucker who made the comment." By this time several other guests came outside and the two groups began to yell at one another. At this point Defendant pulled out his weapon and fired three shots. One shot missed--the others did not. One struck one of the guests in his chest, narrowly missing his heart. As it was, this victim suffered a collapsed lung, a fractured rib and a fractured shoulder. He spent a week in intensive care and required a second hospitalization. A second victim was hit by the remaining shot, which shattered bone and ligaments and severed an artery

in his right hand. The second victim had to undergo several surgeries. As a result of his wounds the second victim has severely restricted blood flow to his wrist and will never regain full strength and flexibility to his hand. Ms. Daniago and others have suffered psychological injuries as a result of this event.

### **Defendant's contentions**

*(1) The court did not properly take into account Defendants educational and employment efforts*

Defendant points to various job and educational programs he participated in prior to his arrest and states he was in the process of obtaining tuition assistance from Strayer University. The court notes in passing that in his motion Defendant contends he “had views toward obtaining a degree in Information Technology.” However, the documentation submitted by Strayer University indicated he was to be in a non-degree program.

Defendant does not contend the court was unaware of his efforts. He did not mention in his motion that the court acknowledged those efforts at sentencing. The court assumes, therefore, that Defendant is arguing that the court did not give those factors sufficient weight when it imposed sentence.

This contention is procedurally barred. Criminal Rule 35 provides that this court will ordinarily not entertain a motion for a sentence modification made more than 90 days after imposition of the sentence. The rule carves

out an exception when “extraordinary circumstances” are present. A request to reweigh factors already known to the court falls squarely within this procedural bar. Defendant has not shown any extraordinary circumstances, and therefore this contention is barred.

*(2) The court erred when it concluded that Defendant was terminated from Job Corps because of poor attendance.*

At sentencing the court noted that Defendant was terminated from Job Corps because of his poor attendance. Defendant now contends that this was not “entirely true.” He now asserts that he simply stopped going to Job Corps after he achieved what he wanted from the program.

Defendant correctly notes that a materially false assumption by a sentencing court may render the resulting sentence constitutionally invalid. Assuming that the court’s understanding that Defendant was terminated from Job Corps because of his poor attendance was only partially true; it was not material to the sentence it imposed. As the court explained, the enhanced sentence was based upon the extremely serious nature of the crime and Defendant’s lack of acceptance of responsibility for it. Defendant’s record with Job Corps played no significant role in the sentencing calculus.

*(3) The court erred when it found Defendant did not accept responsibility for his acts.*

Defendant contends that the court erroneously concluded that defendant had no accepted responsibility for his actions. He directs the court’s attention to a line in Defendant’s interview with the presentence

officer when defendant told the officer “it was my actions that got these people hurt.”

The mere incantation of some words of regret or acknowledgment does not by itself equate to acceptance of responsibility. Rather the court must examine the entire record and make its own determination whether Defendant has accepted responsibility for his action. Here the record shows Defendant tried to deflect responsibility for his actions. He gave police stolen identification when he was arrested and told them he did not fire the weapon. Later, in the same interview in which he purportedly accepted responsibility for his actions, Defendant told the presentence officer a preposterous story in an obvious effort to deflect responsibility.

In light of the above, the court gave no credence at all to his ostensible acceptance of responsibility.

*(4) Defendant’s post conviction efforts at rehabilitation*

Defendant points to his efforts at rehabilitation since his incarceration. While the court commends Defendant on his efforts, it finds that they fall far short of the “extraordinary circumstances” required by Rule 35. This is not to say that post incarceration efforts at rehabilitation can *never* constitute “extraordinary circumstances,” and it may well be that a future defendant’s efforts might suffice.<sup>1</sup> But when viewed in light of the nature of Defendant’s

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<sup>1</sup> The court expects every incarcerated person to take advantage of rehabilitative programs offered by the Department of Correction. It is therefore difficult for the court to see how the fact that someone has ostensibly fulfilled those expectations is “extraordinary.”

crime, the lifelong injuries he inflicted and how close he came to taking a life, his efforts here do not constitute “extraordinary circumstances.”

Defendant’s motion for a sentence modification is therefore **DENIED.**

Very truly yours,

John A. Parkins, Jr.

cc: Prothonotary