

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

STATE OF DELAWARE)	
)	
)	I.D. No. 0306000787
)	
)	
WILLIE NEWSOME)	
)	
Defendant.)	

Submitted: September 3, 2009
Decided: October 8, 2009

On Defendant's Motion for Sentence Modification.
GRANTED IN PART; DENIED IN PART

ORDER

Paul R. Wallace, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State

Michael W. Modica, Esquire, Wilmington, Delaware, Attorney for Defendant
COOCH, J.

This 8th day of October, 2009, upon consideration of Defendant's Motion for
Sentence Modification, it appears to the Court that:

1. On May 2, 2003, Defendant committed a bank robbery at a PNC
branch located at University Plaza in New Castle, Delaware.¹ In connection
with the robbery, Defendant entered the bank at approximately 10:20 a.m.

¹ Ans. to Mot. for Sent. Modification at 1.

wearing a mask and armed with a device he identified as a bomb.²

Immediately after entering the bank, Defendant vaulted over the counter and demanded money while threatening to use the bomb to blow up the bank.³

2. On November 17, 2003, Defendant was indicted on five counts of Robbery First Degree and one count of Wearing a Disguise During the Commission of a Felony.⁴ Subsequent to the indictment but before trial, Defendant pled guilty to one count of Robbery First Degree and one count of Wearing a Disguise During the Commission of a Felony.⁵ Because of a prior robbery conviction in the state of Maryland, Defendant was subject to an enhanced four year minimum sentence in connection with the robbery of the PNC bank.⁶

3. On April 23, 2004, Defendant was sentenced to nine years of incarceration at Level V on the Robbery First Degree charge.⁷ Defendant has previously filed two *pro se* motions for modification of sentence as a result of his incarceration, both of which have been unsuccessful.⁸

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

4. On August 10, 2009, Defendant, now represented by counsel, filed a third Motion for Modification of Sentence seeking a modification/reduction of his nine-year sentence.⁹ Defendant alleges two separate grounds for relief.

First, Defendant correctly alleges a clerical error in his sentencing order because it erroneously states that the entire nine year sentence is mandatory, when, in fact, the offense of Robbery First Degree only required a minimum mandatory sentence of four years in 2003.

Second, Defendant alleges that the non-mandatory portion of his sentence should be reduced from five years to three years because Defendant has engaged in a myriad of prison programs to foster rehabilitation, accepts responsibility for his offenses, understands that “there will be a zero tolerance for any further criminal conduct[,]” and needs to care for his elderly mother.¹⁰

5. There are two ways by which the Superior Court may directly act on Defendant’s motion to correct or to modify a sentence. The first possibility for modification of sentence is upon a motion pursuant to Superior Court Criminal Rule 35(a), which permits the Court to correct an illegal sentence “at any time.” The second possibility for modification of sentence is upon a motion pursuant to Superior Court Criminal Rule 35(b), which requires the defendant to file a motion that meets the procedural requirements of Rule 35 or to file an

⁹ Mot. for Sen. Modification at 1.

¹⁰ *Id.* at 4-5.

application with the Department of Corrections pursuant to 11 *Del. C.* § 4217.

In the instant case, it appears to the Court that Defendant advances both a Rule 35(a) challenge and a Rule 35(b) challenge.

6. Superior Court Criminal Rule 35(a) permits the Court to correct an illegal sentence “at any time.”¹¹ “Illegal” is limited to circumstances in which the sentence imposed exceeds statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.¹² Defendant alleges that a statement contained in his sentencing order stating that “this [sentence] is a mandatory sentence pursuant to [11 *Del. C.* § 4217]” is not precise enough to ensure correct calculation of his sentence.¹³ Defendant alleges that the sentencing order does not clearly define the mandatory portion of his sentence, which is only four years because the crime of Robbery First Degree was committed in 2003, before the current modification of the statute now requiring a longer mandatory sentence.¹⁴

¹¹ Sup. Ct. Crim. R. 35(a). See *Wilson v. State*, 2006 WL 1291369, at *3 (Del. Supr. May 9, 2006); *Smith v. State*, 2000 WL 628346, at *1 (Del. Supr. May 2, 2000).

¹² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

¹³ Mot. for Sen. Modification at 2.

¹⁴ *Id.*

The reference in the sentencing order suggesting that all nine years is mandatory is incorrect. Defendant's motion is **GRANTED** in this regard and the sentence order has been modified to clarify that Defendant's entire nine-year Level V sentence is not mandatory.

7. Superior Court Criminal Rule 35(b) provides that a Court may reduce sentence within 90 days of the imposition of the sentence. Any application outside the 90 days prescribed by rule may only be considered in "extraordinary circumstances" or pursuant to 11 *Del. C.* § 4217. Additionally, Rule 35(b) affirmatively states that the Court will not consider repetitive motions on sentence modification.¹⁵

In the instant case, Defendant has already filed two previous motions for sentence modification, both of which were denied. Pursuant to Superior Court Criminal Rule 35(b) the only remaining argument available to Defendant is that this motion presents an "extraordinary circumstance" contemplated by the rule.¹⁶ The Court has reviewed Defendant's motion and concludes that Defendant has not presented any evidence that his circumstance is "extraordinary."¹⁷ The Court is mindful of the serious nature of the crime.

¹⁵ See *State v. Slater*, 1992 WL 240378, at *2 (Del. Super. Sept. 24, 1992) (stating Superior Court Criminal Rule 35(b) acts as an absolute bar to prohibit repetitive motions).

¹⁶ *Id.* (noting the procedural bar that "prohibits repetitive motions").

¹⁷ *Morgan v. State*, 2009 WL 1279107, at *1 (Del. Supr. May 11, 2009) ("[T]his Court has held that participation in educational and rehabilitative programs, while

Thus, Defendant's request for a reduction in sentence pursuant to Superior Court Criminal Rule 35(b) is **DENIED**.

8. For the reasons stated above, Defendant's Motion for Sentence Modification is **GRANTED IN PART AND DENIED IN PART**. A corrected sentence order is enclosed.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services

commendable, is not in and of itself sufficient to establish extraordinary circumstances warranting review of an untimely motion for sentence modification.”). *See Jones v. State*, 2003 WL 356788, at 1 (Del. Supr. Feb. 14, 2003) (stating that completion of several programs and defendant's family's need of financial support was not extraordinary circumstances as required by Superior Court Criminal Rule 35(b)); *Allen v. State*, 2002 WL 31796351, at *1 (Del. Supr. Dec. 11, 2002) (numerous educational programs were not enough to qualify as extraordinary circumstances).