

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

STATE OF DELAWARE)	
)	
v.)	Case No. 1006008872
)	
NICOLE R. HOFFMAN,)	
)	
Defendant.)	

ORDER

AND NOW, TO WIT, this 11th day of July 2011, having heard Defendant’s Motion to Amend Sentence and the State’s opposition thereto, **IT IS HEREBY ORDERED** as follows:

1. On June 14, 2010, Defendant Nicole R. Hoffman (“Defendant”) pled guilty to Manslaughter. Defendant was sentenced to 13 years at Level V, suspended for 9 years at Level V, followed by varying levels of probation.¹

2. On December 6, 2010, Defendant filed a Motion to Amend Sentence.² On December 14, 2010, Defendant was granted additional time to supplement her Motion to Amend. Defendant filed a Supplemental Memorandum in Support of her Motion to Amend on March 7, 2011.³ On April 1, 2011, the State filed an Answer to the Defendant’s Motion.⁴ Defendant claims “that the Court based its sentencing on information that was factually incorrect and which was material to the Court’s conclusion that the aggravator of ‘undue depreciation of the offense’ justified” the sentence imposed.⁵

¹ Sentencing Order, Docket Item (“D.I.”) 4.
² D.I. 8.
³ D.I. 12.
⁴ D.I. 13.
⁵ *Id.*

3. Upon careful consideration of the record and the parties' post-sentencing submissions, the Court finds that, had it been aware at the time of sentencing that the social media photograph postings depicting the Defendant glorifying alcohol consumption were posted *before* the fatal accident, the Court would probably not have weighed the aggravator of "undue depreciation of the offense" so heavily.⁶

4. The Court further finds that, had it been aware at the time of sentencing that the Defendant offered aid to the victim at the accident scene, it would have considered this as a mitigator.⁷

5. With respect to Defendant's argument concerning the text message supposedly sent the night of the accident,⁸ the Court did not consider the alleged text an aggravator. It considered the alleged text as support for the Manslaughter charge because it suggested reckless behavior that the State alleged contributed to the fatal accident.⁹

6. Defendant argues that her behavior post-accident, including two arrests related to underage drinking, does not indicate lack of remorse, but rather is a manifestation of her depression and dependence on alcohol and cannabis. The Court was not, and is not, persuaded by this contention and finds her post-accident behavior indicated a lack of remorse.

⁶ However, the fact remains that Defendant posted photographs of herself on Facebook showing, *inter alia*, her drinking underage from a Budweiser can in the driver's seat of a vehicle. *See* Exh. 10 to Presentence Report. This fact is an aggravator which the Court appropriately considered in formulating the sentence. In addition, even though the photographs were posted pre-accident, they were viewed by the victim's family post-accident, who were "disgusted to find many pictures of her consuming alcohol." *See* Presentence Report at p. 7.

⁷ *See Wright v. State*, 633 A.2d 329, 340 (Del. 1993) (The Court may consider non-statutory aggravating and mitigating circumstances). At the time of sentencing, the Court considered the Defendant's alleged failure to render aid an aggravator. *See* Presentence Report at p. 3.

⁸ *See* D.I. at p. 6; ("The presentence report notes that a girl named Hosler . . . claimed that she received a text from the defendant, 'Hey I'm too drunk to drive.'").

⁹ Defendant asserts that "texting was not part and parcel of the accident." The Court disagrees with this contention. Defendant received or sent multiple text messages and phone calls just minutes before the fatal accident. These communications grew increasingly contentious and upsetting to Defendant, and added to an already dangerous combination of speeding and drunk driving. *See* Exh. 2 to Presentence Report.

7. In light of the above, the Court finds that Defendant's sentence should be modified to 13 years at Level V, suspended after 8 years of Level V, for 12 months of Level IV, followed by 24 months of Level III.¹⁰

Defendant's Motion to Amend is thus **GRANTED**.

IT IS SO ORDEDED.

Jan R. Jurden, Judge

¹⁰ *State v. Walls*, 911 A.2d 804 (Del. 2006) (TABLE); *State v. Sloman*, 886 A.2d 1257 (Del. 2005) (Sentencing Judge has inherent authority to modify sentence).