

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

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Criminal ID No. 1212003101

v.

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KENNETH FOWLER

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ORDER

The Motion for Reargument/Reconsideration is **DENIED**. The October 24, 2016, order denied the Motion for Modification because the sentence was appropriate. As a secondary matter, also it would not expand the 90 day rule.

The defendant seems to assert that successful rehabilitation would constitute a justifiable reason to modify a sentence. Should there be an application for good cause from DOC then this Court would consider modification. Defendant should pursue a sentence modification based upon rehabilitation under 11 Del. C. §4217.

The Supreme Court said recently in *State v. Culp*,¹ “Employing Rule 35(b) as a mechanism for reducing sentences based upon an inmate’s rehabilitative efforts would undermine §4217 and the important role it assigns to the DOC and the Board of Parole in seeking assurances of community safety and public welfare in the evaluation of claims of successful rehabilitation.”

As to the secondary matter, the Court concludes, “ based on our constitution of the relevant statute and rules, we conclude that, after 90 days, a plea for leniency

¹ Del. Super., 2016 WL 7176720 at Pg. 4

based upon rehabilitative efforts must proceed through one of these two routes – either §4217 or through the Board of Pardons process.”²

/S/ CALVIN L. SCOTT
Calvin L. Scott, Jr.
Superior Court Judge

Dated: December 14, 2016

oc: Prothonotary

cc: Sonia Augusthy, Deputy Attorney General
Michael Modica, Esquire

² *Id.*