

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
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December 29, 2017

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RE: State of Delaware v. Lamont Harden
Criminal ID No. 9510013677

On Defendant's "Amended Motion for Modification of Sentence." **DENIED.**

Submitted: October 5, 2017
Decided December 29, 2017

Dear Counsel:

Defendant seeks review pursuant to 11 *Del. C.* §4204A(d)(1) and Superior Court Criminal Rule 35A of his thirty-two-year sentence imposed in 1998 for the 1995 rape and beating murder of his nine-year-old victim. He is presently serving thirty-two years at Level V under sentences for Murder Second Degree and Unlawful Sexual Intercourse Second Degree. The crimes were committed when Defendant was fifteen years of age. As Defendant has served twenty years of his sentence, he is statutorily entitled to petition for a review of his sentence. He requests a sentencing hearing.

Defendant's counsel has done admirable work in assembling a very thorough and comprehensive motion seeking a sentence reduction. Among numerous supporting documents are an August 28, 2017 letter from Kathleen Covelli-Reyes, M.Ed, advising that Defendant "presented as a very polite, but timid young man when he first entered the NCCD," "then went on to be a model resident," "showing tremendous growth emotional, physically, and academically." She supports a reduction of sentence and the preparation of a "comprehensive re-entry plan that will afford him an opportunity to live a productive life in the community." (Exhibit D to Motion).

Allison McGonigal, Director of Division Management Support Services of the Department of Services for Youth and Their Families, submitted a letter dated August 2017 on Defendant's behalf. She was his case manager while at the detention center. Among other things she said that "Lamont is a quiet leader by example, and probably the only resident who could acquire positive feedback from every staff member in the building." She added, "I am confident had his arrest and subsequent proceedings occurred today, the outcome would have been dramatically different given his age, social history, our knowledge of the impact of adverse childhood experiences, and evidence-based practice and research on adolescent brain development." (Exhibit E to Motion).

While at the Department of Corrections, Defendant has been consistently placed at the minimum security level since 2009 and has a relatively minimal disciplinary record. He has consistently held a job while incarcerated and has been pursued job related programs such as masonry and ServSafe certification to assist in employment beyond prison walls. While incarcerated, he has completed and obtained 31 certificates and programs, and has earned his high school diploma. (Motion at ¶ 37-38).

Defendant has expressed "regret and remorse" for his actions in the taking of the victim's life. (Exhibit C to Motion).

Defendant had a very dysfunctional upbringing, having lived alternatively with his mother, father, and in different foster homes. Both parents inflicted emotional and physical abuse upon him. Both parents were addicted to drugs.

Defendant had no prior significant adjudications of delinquency.

* * *

The State, in response, acknowledges the applicability of various mitigating factors, (some of which are identified by the court in this letter). However, the State points out the “ghastly nature” of the crime. As noted by the State:

“The injuries inflicted upon [the victim] were nothing short of horrific. His skull was fractured in several places. His gums were torn away from his upper teeth and his lower teeth were bent inward. The child had been anally raped, as evidenced by the medical examiner’s findings of traumatic anal penetration consisting with intercourse. The medical examiner also interpreted petechial hemorrhages in the victim’s eyes as evidence he was strangled.” (State’s Response at 2.)

The sentencing judge stated at the 1998 sentencing that this murder was exceptional among murder cases. The Court at the time carefully balanced the horrific acts with a consideration of mitigating information. The Court had the ability to sentence Defendant between a minimum of twenty years up to a maximum of 40 years. The Court ultimately imposed a thirty-two-year Level V sentence, well within SENTAC guidelines. The Court imposed a sentence of less than the full forty years.

Defendant has been awarded good time credits that have reduced his sentence from the thirty-two years imposed by the Court, and apparently has an estimated short-term release date of September 5, 2022. This would have the net result of an approximately twenty-seven-year Level V sentence.

Defendant, in a letter to the Court dated September 9, 2017, expressed remorse for his actions, but the State points out that Defendant still apparently refuses to disclose the name of another person who supposedly raped the victim and continued to batter him. (State’s Resp. at 4).

This Court recognizes that the United States Supreme Court has acknowledged, in cases such as *Miller v. Alabama* recognized “that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” 567 U.S. 460, 472 (2012). Children are constitutionally different than adults for sentencing purposes. *Graham v. Florida*, 560 U.S. 48, 68 (2010), *as modified* (July 6, 2010) (“[B]ecause juveniles have lessened culpability they are less deserving of the most severe punishments.”); *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (holding that “a lack of maturity and an underdeveloped sense of responsibility are found in youth

more often than in adults and are more understandable among the young.”) (internal brackets and internal quotation marks omitted).

Conclusion

The Court declines to reduce Defendant’s sentence despite the mitigating factors set forth in his Amended Motion because of 1) the absolutely horrific nature of the crime; 2) the fact that he was sentenced to a thirty-two-year Level V sentence, that sentence being approximately three-quarters of the maximum sentence that he could have received; and 3) he has an estimated release date of September 20, 2022.

Accordingly, Defendant’s motion for reduction of sentence is DENIED. No sentencing hearing will be ordered. IT IS SO ORDERED.

Very truly yours,



RRC/krb

cc: Prothonotary

Investigative Services