

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )

v. )

MICHAEL J. FORD, )

Defendant. )

ID No. 1512016447

Date Submitted: October 28, 2019

Date Decided: November 18, 2019

**ORDER**

Upon consideration of Defendant's third Motion for Modification of Sentence ("Third Motion"), Superior Court Criminal Rule 35, statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

1. On June 27, 2016, Defendant pled guilty to Assault Second Degree Victim 62 Years of Age or Older.<sup>1</sup> On August 3, 2016, Defendant was sentenced to 8 years at Level 5, suspended after 4 years, for 18 months at Level 3.<sup>2</sup> He was ordered to have no contact with the victim and her home.<sup>3</sup>

2. On January 29, 2018, Defendant's first motion for sentence modification was denied.<sup>4</sup> On August 27, 2018, Defendant's second motion for

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<sup>1</sup> D.I. 9.

<sup>2</sup> D.I. 11 (effective December 27, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> D.I. 13.

sentence modification was denied.<sup>5</sup> In both of those motions, Defendant asked the Court to lift/vacate the No Contact Order.<sup>6</sup>

3. On October 28, 2019, Defendant filed the Third Motion, again requesting his No Contact Order be lifted.<sup>7</sup> In support of his Third Motion, Defendant cites: (1) victim needs assistance; (2) ongoing mental health treatment; (3) good support system; (4) serving probation.<sup>8</sup>

4. When the Court considers a Rule 35(b), it must address any applicable procedural bars before addressing the merits of a Rule 35(b) motion.<sup>9</sup>

5. Pursuant to Superior Court Criminal Rule 35(b), the Court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed.<sup>10</sup> A motion for modification of partial confinement or probation, however, is not procedurally barred by the 90-day requirement.<sup>11</sup> Therefore, Defendant's Motion is not time barred because he seeks to lift the No Contact Order.

6. However, Rule 35(b) has a more unforgiving procedural bar—repetitiveness. Pursuant to Rule 35(b), “the Court will not consider repetitive

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<sup>5</sup> D.I. 15.

<sup>6</sup> D.I. 12, 14.

<sup>7</sup> D.I. 17.

<sup>8</sup> *Id.* Defendant is currently awaiting a violation of probation hearing.

<sup>9</sup> *State v. Redden*, 111 A.3d 602, 606 (Del. Super. 2015). The Court must consider procedural bars in order to uphold the “integrity of the Court’s rules and the finality of its sentencing judgments.” *Id.*

<sup>10</sup> Super. Ct. Crim. R. 35(b).

<sup>11</sup> *Id.* (“The Court may . . . reduce the . . . term or condition of partial confinement or probation, at any time.”); *see also Redden*, 111 A.3d at 609.

requests for reduction of sentence.”<sup>12</sup> A Rule 35(b) motion is considered repetitive when the motion “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”<sup>13</sup> The repetitive bar is “absolute and flatly ‘prohibits repetitive requests for reduction of sentence.’”<sup>14</sup> This is Defendant’s third Rule 35(b) motion and is, therefore, barred as repetitive.

7. Since Defendant’s Third Motion is procedurally barred, the Court shall not consider the merits of his claim.<sup>15</sup>

Accordingly, for the foregoing reasons, this Court finds that Defendant has not demonstrated cause for the relief sought.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendant’s Motion for Modification of Sentence is **DENIED**.



Jan R. Jordan, President Judge

Original to Prothonotary

cc: Terence L. Williams Jr., *pro se* (SBI# 00733106)  
Matthew F. Hicks, DAG

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<sup>12</sup> Super. Ct. Crim. R. 35(b).

<sup>13</sup> *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

<sup>14</sup> *Redden*, 111 A.3d at 608–09; *see also* 11 *Del. C.* § 4217.

<sup>15</sup> *State v. Reed*, 2014 WL 7148921, at \*3 (Del. Super. Dec. 16, 2014).